STATE AND RELIGIOUS ENDOWMENTS IN MADRAS

Chandra Mudaliar

UNIVERSITY OF MADRAS
1976

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Price Rs. 20/-

Printed at Rathnam Press, 11, Badrian Street, Madras-600 001.

In memory of Professor R. Bhaskaran

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INTRODUCTION

This study of the problem of State and Religious Endowments in Madras, originally submitted for the degree of Doctor of Philosophy, is the result of my study and research from 1958 to 1961. My intention in selecting this problem was to study the operation of a very special type of unit in the administration of the Government of Madras. It is an example of a kind of pioneering in administration.

The problem demanded very considerable amounts of historical study. I therefore felt the work should be conducted in a mannar which will not only help me to evaluate the present in the light of the past but will also obviate the re-doing of this portion of the work by later scholars.

My preliminary survey of the problem showed that there were volumes of material on Hindu religious endowments but not anything of the same quantity on non-Hindu endowments. This is explicable because legislative and administrative activities in regard to Muslim and Christian endowments were very limited. I decided to obtain as much information as I could get, and study in detail the problem of Hindu religious endowments and arrive at conclusions. The problem admits of enquiry in three aspects—legal, constitutional and administrative. Having taken the study of all the aspects, I decided to enquire into each one of them to the extent that was possible and necessary.

I was able to have access to all the pertinent records and obtained the help of senior legal and administrative personnel—made available by way of interviews—and collected all the information currently available. I found that the people in charge—the Hon'ble Minister for Hindu Religious and Charitable Endowments Department, the Commissioner for Hindu Religious and Charitable Endowments Department, the Curator, Madras Records Office, most willing to give the help I needed. The

Madras Records Office placed at my disposal all the available material, except the files which were "confidential." Since the matter has been discussed in the Local Legislature many a time, it is not likely that much has been missed by the non-availability of confidential files. The investigation at the Madras Records Office required perusal and study of many volumes of consultations, proceedings, debates, administration reports, and Government Orders as well as hundreds of pages of print and manuscript. I have also read the old files of the *Hindu* and the *Mail*, the details of which are set forth in the bibliography.

I have also tried to get views and opinions, through questionnaires and interviews, of competent persons in the field and have attempted to draw conclusions wholly from the evidences thus gathered.

In order to consider the beginnings of adminstration of religious endowments, it was necessary to go back to the advent of the English in South India. Beginning from these and coming down for nearly three centuries, the study has been brought up-to-date. The material is here presented in seventeen chapters followed by a concluding chapter which sets out the writer's own views on the problem of State administration of religious endowments.

This study falls into two parts, (1) historical and (2) administrative.

The first chapter is a brief description of the association of the English with the native religious institutions. The second analyses the law and policy adopted by the English in respect of these institutions and their subsequent disengagement from the commitments in the affairs of these institutions. The third describes legislative activity for the better supervision of the religious institutions. The fourth chapter deals with the Act of 1927, the foundation of the administration.

The second part of the thesis traces the growth of the administration of the religious endowments after 1927. This part deals

with the resultant complexity and elaborateness of the problems consequent to the introduction of Montagu-Chelmsford reforms. Chapter 5 describes the legislative amendments to the Act of 1927, the sixth, the machinery of supervision viz. the Board of Commissioners for Hindu Religious Endowments and its operational difficulties and chapter 7 describes the local agency of supervision, the Temple Committees, their position, weaknesses and final exit. The eighth traces the growth of personnel management and the problems facing it. The nineth chapter is concerned with the financial administration of the Board. The tenth analyses the judicial scrutiny of the Act of 1927, the administration of the Hindu Religious Endowments Board and final repeal of the Act II of 1927. The Chapter 11 describes the framing of the Act of 1951, the core of the present administration of the Hindu Religious and Charitable Endowments Department. Chapter 12 narrates the several legal objections and judicial decisions on the Act of 1951 as well as on the administration of the Department in the context of the new Constitution and fundamental rights guaranteed by the same. Chapter 13 deals with the amendments of the Act of 1951 and the further legal and constitutional objections to them. Chapter 14 concerns with the repeal of the Act of 1951 and framing of the Act of 1959—the latest legislation on the Hindu religious endowments. The chapter 15 describes the structure and operation of the Hindu Religious and Charitable Endowments Department. Chapter 16 deals with Muslim and Chapter 17 relates to Charistian endowments. Due to dearth of and also inaccessibility to material on Christian endowments it was necessary to confine myself with the concept of management of the Christian religious trusts.

At the end of each chapter is a concluding paragraph which sums up the main findings of the chapter. My observations and conclusions are set forth in the last chapter.

I am deeply indebted to the Vice-Chancellor of the University of Madras, Padmasri N. D. Sundaravadivelu, M.A., L.T., for all the help and encouragement I have received from him. I owe the publication of this book entirely to his keen interest in my research.

My grateful thanks are due to the University of Madras and the Government of India for the award of scholarship, to late Dr. Baliga, Curator of the Madras Records Office for his guidance in consulting records; to Hon'ble Sri M. Bhaktavatsalam for enabling me to study the operational side of the administration of the Department; to Sri Uthandaraman, I.A.S., Commissioner for Hindu Religious and Charitable Endowments and the staff of his office for giving valuable information; to the Curator and the staff of the Madras Records Office for the unfailing assistance and courtesy shown to me during the years I worked there. I am specially indebted to late Sri M. Patanjali Sastri, former Chief Justice of India, late Sri C. P. Ramaswamy Iyyer, Chairman, Hindu Religious Endowments Commission of the Government of India, Sri Sankaravadivelu, former Commissioner, Hindu Religious and Charitable Endowments for granting me interviews and answering my questionnaires. I am most grateful to late Professor R. Bhaskaran, under whom I worked and under whose able guidance I was able to complete this work. I must also express my gratitude to Professor C. A. Perumal, for the help and encouragement he gave and continues to give me in my research. My grateful thanks are due to my sister, Professor N. Radhakrishnan, her husband, Mr. D. Radhakrishnan and my brother, Mr. P. R. Mudaliar, for reading the typescript and making valuable suggestions.

Chapter I

RELIGIOUS ENDOWMENTS AND THE STATE GOVERNMENT (TILL 1817)

An endowment in its primary sense is the crertion of a perpetual provision out of lands or money for any institution or person. In a secondary and more general sense it is wealth applied to any person or use.[1] In Webster's dictionary, the term "Endowment" is stated, among other things, to mean "that which is best owned or settled on a person or constitution, property, fund or revenue permanently appropriated to any object."

Therefore, according to the above definitions, endowment means wealth, whether in the form of money, land, produce of land, or any other movable or immovable property, set apart permanently as a provision for any object or purpose. This is also the meaning of the word as used in the Regulation XIX of 1810 of Bengal, the Regulation of VII of 1817 of Madras and the Religious Endowments Act XX of 1863, and other legislations. A religious endowment must, therefore, mean wealth set apart permanently for a religious purpose, e.g., a religious establishment, foundation or an institution.

There are today endowments in many forms and for diverse purposes. Among the Hindus there are two main types of religious endowments:

1. Temples.
2. Maths.

Temple is a *Devasthan* or a place dedicated for the worship of a deity. Indeed, temples are familiar examples of religious endowments and they form a considerable class.

Some time in many famous and ancient temples there are *Kattalais* which are special endowments for special purposes.

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1. Wharton's Law Lexicon, p. 269.

Sir T. Muthuswamy Iyer in *Vythilinga Pandara Sannadhi Vs Somasundara Mudali* explains the meaning of *Kattalai* thus, "In ordinary parlance the term '*Kattalai*' as applied to temple endowments signifies a special endowment for certain specific service or religious charity."[2]

The other common endowment among the Hindus is the *math.* It is a place which facilitates spiritual instruction and the acquisition of religious knowledge. In its narrow sense, the term signifies residence of an ascetic or a *sannyasi.* A Hindu *math* somewhat resembles a Catholic monastery.

The Mohamedan religious endowments are the Mosques, *Takkias*, *Dargas* and *Khankahs.*

Mosque or *Masjid* is a place where the Muslims offer their prayers, A *Takkia* is a place where a dervish resides before he attains sufficient public importance, before disciples gather round him and a lodge is erected for him. A *dargah* is the tomb of a dervish regarded in his lifetime as a saint. A *Khankah* is a monastery or a place where religious mendicants of the Mohamedan religion temporarily resides. These institutions are somewhat similar to maths.

All endowments are classified into two main groups:

1. Public endowments.
2. Private endowments.

The distinction between the two has been established mainly by judicial decisions. The ingredients of a public endowment are likewise determined by these decisions.

When an endowment is made for the benefit of either the public at large or a considerable portion of it answering a particular description, the endowment is public endowment.[3] "If an institution is an ancient one whose foundation is unknown,

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2. (1893) I. L. R. 17 M 199 (200).

3. Century Dictionary – Tittle "Public".

it is *prima facie* a public endowment."[4] Besides, the regulations of the State apply to public endowments, though it is not a conclusive test to prove that a particular endowment is a public endowment.

While private trusts or endowments are "those trusts wherein the beneficial interest is vested absolutely in one or more individuals who, within a certain time, may be definitely ascertained, and to whom, therefore, collectively unless under some legal disability, it is competent to control, modify or determine the trust."[5]

The next question to study here is the nature and degree of control exercised by the native rulers over the religious endowments. That the Hindu Kings exercised supervision over Hindu temples will be clear from numerous historical records. In Kautilya's Arthasastra, it is said, "The Superintendent of the Religious Institutions may keep in one place the individual wealth of the Gods of fortified cities and country parts and take away the same (to the king's treasury)."[6] Thus there must have been a King's official or a minister in charge of religious and charitable works. When King Abhirama Pandya summoned the learned and asked whether gift or protection was better he was told, "Protection, O Pandya King, is superior in this world than gift. By gifts one attains heaven (*Swarga*) but by protection the imperishable state. Thus all men versed in the Puranas have declared protection to be superior. This, O King, is our view. Render thou protection which is purifying."[7] It was, therefore, the duty of the King not only to endow but also to protect the religious institutions and the latter function was more honourable.

There are cases to show that the kings interfered when there were disputes regarding temple matters. In *Chintaman Balaji Dev*

4. *Subramania Iyer Vs Venkatachala Vadhyar*, (1916) 4 L. W., 444 (450).
5. The Century Dictionary — under Title "Private".
6. P. R. Ganapathy Iyer, *The Law relating to Hindu and Mohomedan Endowments*, Madras, 1904, p. 23.
7. *Travancore Archeaological Series*, Vol. I, Group VI, p. 108–109 and 113, Trivandrum, 1930.

Vs Dhondo Ganesh Dev[8] there was an evidence to show that when the disputes arose between the Shri Dev Devasthan and the Bhaubands, the ruling power of Satara in 1741 and the Peshwa in 1744 had to interfere.

The Hindu rulers therefore exercised through their officers powers of supervision over all religious institutions. They built and endowed temples. The Chola and Pallava temples are the testimony to that. They interfered when there was mismanagement. The supervision of temple management was recognised as one of the important responsibilities of the Ruler in former states of Travancore, Mysore and Pudukottai. Till the merger and reorganization of states in 1956, each of these states had a separate department to supervise and control its religious institutions.

Under the Mohamedan administration, the *Qadis* possessed powers in respect of *Wakfs.* No *wakf* property could be alienated without their sanction. The Sovereign through the *qadis* appointed *Mutawallis* in certain cases. The *Mutawallis* were in charge of the trusts.

Thus under the native rulers it was considered the duty of the rulers not only to protect but also to manage religious institutions. This function had the sanction of religion. The Hindu Rulers carried on these functions not only because it had the sanction of religion but also because the basis of State was theocratic. The King was expected to proclaim his religion and rule according to the tenets of his religion. He always ruled as the servant of God. The Kings of Travancore always styled themselves as 'Padmanabhadasa'. '*Dasa*' means servant. Thus the kings of Travancore ruled the country as the servants of God Padmanabha. However, the rulers of Hindu theocratic states were expected to be tolerant towards the religions of their subjects if their religion differed from that of their subjects'. Thus there are cases when the Hindu rulers protected and richly endowed institutions of other religions. Except during periods when religious intolerance was at its worst, even the Mohamedan rulers of India considered

8. (1888) I. L. R. 15 B 612 (619).

it their duty to make provisions against deterioration and decay of Hindu temples.

When the English landed on the Coromandel coast and later acquired *Jaghir* for themselves they introduced not only their system of government, but also respected and administered native laws and customs. The history in this field from 1600 onwards records several instances of this kind.

The East India Company and the Religious Institutions

The association of the Company with the local religious institutions begins with the acquisition of the *Jaghir* by the Company, i.e., in 1640.

The period of contact between 1640-1817 (i.e., before the Regulation VII of 1817 was passed) can easily be divided into two parts :

1. 1640 — 1790, and
2. 1790 — 1817.

The point of difference between the two periods is that the earlier period records isolated instances of contact between the Company and the religious institutions and the latter describes a closer association of these two, finally leading to the framing of the Regulation VII of 1817.

First phase : 1640—1790

Though the history of the period records isolated instances of contact, the relationship as such was dominated by two primary considerations, viz.

1. the promotion of trade and commerce,
2. the consolidation of their rule.

All the activities of the Company were geared to the implementation of these two ideas.

One such function was the maintenance of law and order. In order to carry out this police function efficiently, the Company did not hesitate to interfere with the religious life of the local people.

When a dispute arose between the Tengalai and the Vadagalai Brahmins of Triplicane with regard to the incantation of certain prayers, the principal inhabitants approached the Company with a request' "that one of the Pagodas at Triplicane (there being two) may be assigned to the use of the Tengalai Brahmins and the other for the Vadagalai Brahmins and that they be ordered not to interfere or molest each other in the performance of their respective Rites."

The other and more constructive function was to give to the local people their laws, their institutions and to carry on their customs as faithfully as the Hindu Rulers did.

One such custom was the payment of certain duties by the Hindu and Muslim merchants for the maintenance of each other's place of worship. Every merchant was expected, "to pay minor dues ordinarily payable to......*Muskeet* and *Pagodas*......"[10] That such an action existed and continued to exist on the Company's settlement is proved from their minute which reads " From the first settlement of this Place the Moors as well as the Gentues pay'd a duty to the Gentue Pagoda or places of worship here, and the Gentues always pay'd something to their Muskeet, and do to this day."[11] The Company thus observed the ancient custom and continued to collect the dues at the Custom House and distribute them among the religious institutions. When in 1699 the collection of these dues was discontinued for reasons "wholly unknown to the Governor and the Council,"[12] the Company decided to renew it. The Governor and the Council "finding no orders therein for taking it (off)"[13] resolved, "that the taxes be collected as formerly and accordingly orders were given to the Sea Customers and the Canicop(ly) at the sea gate."[14] The above

9. *Diary and Consultations Book*, September 1754, vol. 83, p. 123.
10. *Public Cousultations*, vol. 16, dated 6th March 1689/90.
Muskeet – Mosque from the Arabic Masjid through Portugues Mesquita.
Pagoda – Perhaps derived from the Sanskrit *Bhagwat* – Sacred.
11. *Public Cosultations*, vol. 37–38, dated 27th March 1707.
12. *Ibid.*
13. *Ibid.*
14. *Public Consultations*, vol. 37–38, dated 27th March 1707.

resolution displeased the Moors who resented paying dues to the Hindu Pagodas. They petitioned the Company for exemption. Rejecting the petition the Council concluded, "If we should give way in this manner it is not unlikely that one of these days they will insist on being custom free, for that the old proverb is as well adopted to these sort of men as any in the world, for that given an Inch and they take an Ell--it is therefore unanimously agreed that they are made to pay the duty as formerly, or to leave the Place."[15]

The request of the Moors for the exemption was not acceded to and the ancient custom of paying the duties on every commodity for the maintenance of the temples and mosques was continued.

However, it will be incorrect to assume that, in their anxiety to observe the ancient customs of the land, the Company collected the dues through their own agency. The duties were collected by *Canicopoly* who was not the Company's servant. Besides it is likely that the managers of the Pagodas authorised some responsible person to collect on their behalf or they collected the duties themselves.[16]

The Company often collected the reasonable amount as dues. When the Council observed that "there being good reason to surmise that more than what is allowed has some times been demanded......"[17] they directed that "the managers of the said Pagoda do respectively deliver in an account of the several Rates of the Duties by them collected and the Authority

15. *Ibid.*

16. "It is necessary to observe that the percentage which the native merchants have voluntarily appropriated for nearly half a century to the use of the several churches upon the articles of merchandise of overland import and export are......collected at the Land Custom House by Churchwardens themselves". Vide H. D. Love, *Vestiges of Old Madras*, vol. II, p. 578 Indian Records Series, London, 1913.

17. *Diary and Consultations Book*, December 1753, vol. 81, p. 400.

by which they are demanded."[18] The sole purpose of the order was "to form such Resolution thereon as to them shall appear most for the Publick Good."[19]

The above instance shows how anxious the Company was to maintain the ancient customs, at the same time they were cautious in their actions in relation to religious institutions. When President Yale took Perumal and Parthasarathy temples of Triplicane from the hands of the Company's merchants and 'made Rangaia Chettie, Collapamatadre and others the overseer and Governors of Pagodas......,'[20] the local people became quite suspicious of the action of the President Yale. To remove the suspicion the Company returned the Pagodas to the chief merchants and the Council declared, "We doe give them liberty to make the same use of their Pagodas, to receive the same income for both as formerly, but reserve to ourselves the power of recalling that liberty when we shall see cause. And also the ground belonging, as they say, to Triplicane is to be disposed off by us to such Inhabitants as we shall think fit to settle there; and that is not in their power to lay any taxe upon such Inhabitants without our consent......that they are to give account yearly or eve(ry) New Year's day of the Incomes of Triplicane and how the same does arise."[21] Though the Council had retraced their steps they, nevertheless, conveyed to the people in the settlement that the English alone were masters, capable of granting or denying the privileges and liberty to the people. This instance of diplomatic compromise was necessary to consolidate their rule.

Just as the Company observed the ancient customs, they also deviated from such observance, in order to promote trade. While they collected dues on all merchandise, they, right from the beginning of the settlement, exempted the English merchants from the payment of these dues.[22]

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18. Diary and Consultations Book, December 1753, vol. 81, p. 400.
19. *Ibid.*
20. *Public Consultations*, vol. 19, dated 29th December 1692.
21. *Ibid.*
22. *Public Consultations*, vol. 16, dated 6th March 1689/90.

Second deviation was, when, the Company at the instance of Sir Joshua Child, the Deputy Governor of the Company's territories, granted special privileges to the Armenians with a view to encourage them to settle in the English towns of south India. One such privilege was, "that they (Armenians) be exempted from the payment of minor dues ordinarily payable—to Muskeet and Pagodas."[23]

In 1716, the Muslims refused to pay the duties towards the maintenance of the Hindu temples. And many of them left Madras. Their departure affected the Company's economy adversely. The Company therefore conceded to their demand that 25 *Casu*[24] per *Pagoda*[25] should, when paid by the Muslim traders be devoted to the Mosques instead of the temples.[26]

During Governor Collet's time a number of concessions were granted to 'Cool Musalmans', a sect of the Mohamedans, who did not want to pay any duties either to Hindu temples or Muslim mosques. Since their presence was considered necessary for the promotion of the Company's trade, they were granted a charter of exemption from payment of the duties.[27]

The history between 1640–1790 is a chequered one and records isolated instances of contacts which existed under the Hindu and Muslim rulers. Decisions were taken intermittently, Yet one cannot fail to see that the two principles referred to as above guided the action of the Company.

Thus, it was for the promotion of trade and commerce that the establishment of law and order and creation of peaceful conditions were necessary. It was again in the interest of trade as well as for the consolidation of their rule that the observance of ancient customs, and thereby winning the confidence of the local people, was necessary. It was again in order to consolidate their

23. *Public Consultations,* vol. 16, dated 6th March 1689/90.

24. *Casu*—The currency of those days.

25. *Pagoda*—The currency of those days.

26. *Public Consultations,* vol. 47, dated 16th January 1715/16.

27. *Public Consultations,* vol. 50, dated 23rd February 1718/19.

rule that they claimed to grant or to deny the privileges to the local people.

It was therefore these two principles—of promotion of trade and consolidation of the rule—which guided the action of the Company between 1640–1790 and not a predetermined policy of controlling, supervising and administering the religious institutions of the local people.

Second phase: 1790—1817

The second period of association begins about the year 1790 and lasts till 1817,—the year when the Regulation VII of 1817 was framed.

This period, unlike the previous one, records instances of closer association of the Company with the native religious institutions. The closer association was due to the fact that the Company was assuming several responsibilities in respect of these institutions. The ultimate result of this was the passing of the Regulation VII of 1817, which for the first time, gave the Company powers of superintendence over the religious institutions.

The reasons for the assumption of several responsibilities were due to four factors:

1. Creation of Board of Revenue, 2. initiative and the powers of the Collectors, 3. the desire on the part of the Company to impress upon the people the beneficial effects of their rule, and 4. encouragement given by the people to the Company to assume these responsibilities through their petitions.

The first significant event during this period was the constitution of the Board of Revenue in 1789. Since the Board was in charge of the organization of the collection of revenue, the affairs relating to religious institution came to be managed by the Board of Revenue. This was not unnatural since the religious institutions possessed properties yielding huge revenues. However, this was an important step. The religious institutions received more organized attention through the Board of Revenue. The Board in its efforts to look after the revenues could not but take note of all other factors which produced revenue.

The Collectors were the agents of the Board in the districts. They were not only in charge of collection of revenue but also responsible for law and order, besides being magistrates. This extraordinary position of the Collectors not only made them detect mismanagement, but also decide issues and implement them. The Collectors became the pivot of the administrative machinery, the driving force towards the consolidation of the Company's rule. They began to assume more and more powers and responsibilities as and when the conditions of the place demanded. The assumption of these responsibilities however depended on their initiative and awareness of the needs of the religious institutions. It had to be so since there was no regular enactment of the Government directing the Collectors to undertake those functions uniformly in respect of all the religious institutions.

The following minute of the Board of Revenue reveals the Government's desire to impress upon the people the beneficial effects of their administration. While recommending to the Government the continuance of payment of voluntary contributions to the religious institutions, the Board adds, "the relinquishment on the part of the *Sirkar* (Government) of the voluntary contributions—will take away very little from its (Sirkar's) revenues, while it will add considerably to the funds of the Pagodas and strongly mark in the minds of the people—happy distinction between British generosity and justice and Mohammadan rapacity and sacrilege."[28]

Having established law and order it went a step ahead and even afforded protection to the properties of these institutions from being mortgaged or alienated. Thus, Mr. Dighton, Superintendent of the *Jaghir*, while enclosing a list of furniture belonging to the Trivalore Pagoda, reports to the Board "I found they (Brahmins) had mortgaged part of the property for their own private use, and for which they were to be brought to immediate account—. The Amildar has taken security, making them answerable for the few things missing."[29]

28. *Board of Revenue Consultations*, 26th February 1802, vol. 311, p. 2094.

29. *Board of Revenue Consultations*, 12th January 1789, vol. 24, p. 70.

The Board of Revenue also prevented the alienation of properties donated to the Pagoda. When the Collector of Kumbakonam reported to the Board that the Adalat of "Jillah Combaconom" had authorised the Superintendent of the Paumony Pagoda to sell by public sale the lands belonging to the Pagoda for debts incurred for the ceremonies performed in the temple, the Board directed the Collector "to take such measures as the Regulation which warrant to prevent the execution of a decree in the first instance and the reversal in the second instance."[30] The Board even sent a circular letter to all the Collectors. It informed them that "this communication is intended to put you on your guard and to apprise you—that a Court of justice is not competent to order the sale of the—land of the description in satisfaction of private debts."[31]

The Government later decided to organise the collection as well as the distribution of the revenues of the Pagodas and Mosques. Thus in their communication to the Board of Revenue the Government said "We have abolished all fees voluntary and involuntary of whatever description."[32] And later in order to compensate the loss "which the *Churches* will sustain by the abolition of the fees" they directed "that half of the amount which may be collected upon valuable sort of goods at five percent be distributed by the Land Customer after having first submitted the ground of such distribution to your Board among these *Churches* for which the fees have hitherto been collected."[33] On the direction of the Board of Revenue,[34] Mr. Parry, the Land Customer sent to the Board of Revenue "a statement showing the amount which falls to be distributed amongst the different Pagodas drawn out in conformity to the resolutions of the Government on the subject."[35] The Board of Revenue did not

30. *Board of Revenue Consultations,* 12th January 1815, vol. 666, p. 708.
31. *Board of Revenue Consultations,* 20th March 1815, vol. 672, p. 2886.
32. *Board of Revenue Consultations,* 14th April 1796, vol. 152, p. 3642.
33. *Board of Revenue Consultations,* 14th April 1796, vol. 152, p. 3642.
34. *Board of Revenue Consultations,* 18th April 1796, vol. 153, p. 3681.
35. *Board of Revenue Consultations,* 14th July 1796, vol. 161, p. 7069.

merely collect and distribute the amount among the various churches, without making the Church officials responsible for the due appropriation of the amount. Thus the Churchwardens and Superintendents of charities were made to execute a bond binding themselves to the due appropriation of the Church funds and to submit to any enquiry the Board may order relative thereto." [34]

Besides the above source of revenue the Government also collected *maniams* on behalf of the *Pagodas.* Thus when the Churchwardens of Little Conjeevaram sent a petition to the Board that the *maniam* collected by the Collector were not paid to him, the Board directed the Collector "to pay him (churchwarden) the amount of the established *maniams* that have been collected in your division belonging to the Pagoda at Little Conjeevaram." [35] As far as the collection and disbursement of the revenues from the landed properties of the institution were concerned, the Board of Revenue recommended a new plan. Hitherto the mode of collection and disbursement in some of the districts was "that of bringing the revenues from the lands of religious institutions—Hindoo and Mohamedan—to account as Revenue receipts and of entering the disbursements as Revenue charges." [36] According to the new plan the revenue as before was received by the Collectors, but "the disbursement should not be entered in the Public Account as a charge, but be brought to account separately as a deposit, until regularly audited by the Board." [37] The Government accepted the proposal and recommended its implementation.[38]

The responsibility of collecting the revenues of the *Pagodas* was not without its privileges. The Government claimed as their

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34. *Board of Revenue Consultations,* 5th December, 1796, vol. 169, p. 10701. *Maniams*—Revenues from lands granted as gift by the ruling authority.

35. *Board of Revenue Consultations,* 1st May, 1794, vol. 99, pp. 3521–23.

36. *Board of Revenue Consultations,* 7th March, 1808, vol. 460, p. 1435.

37. *Ibid.*

38. *Board of Revenue Consultations,* 18th April, 1808, vol. 462, p. 2462.

share the collections made at new moon 'day' during the months of January and June.[39]

Collectors also arbitrated in disputes relating to the officers in church. The Collector of Seringapatam while transmitting to the Government, a copy of judicial proceedings relating to the right of Hircarah Ramiah to a benefit in a certain *Pagoda* in the fort of Seringapatam, reported that "various parties were examined and judgement was given that a Brahmin will officiate in the temple —and there will be a box in which collection will be made and its key will be in revenue *Cutcherry*—at the end of every month the box shall be opened in the presence of two *Pujaries* and officer on the part of the Government—and of *Pagoda* if he pleases to be there—will first instance out of the cash the salaries of the pujaries, the daily expense will be paid."[40] On another occasion the officials at Little Conjeevaram refused to abide by the decision of the Collector to settle the dispute relating to the churchwardenship of the Pagoda, the Board directed the Collector, "you will not make any disbursement to support the expenses of Pagoda, when you inform us—that—the parties by joint consent have appointed a Gomasta or Churchwarden and has been confirmed and ratified by a suitable document, we shall then send Instructions respecting the various *maniams* and privileges. You will do well again fully to explain to the parties our resolution on the subject."[41]

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39. "Out of the twelve new moons in the year (period of calculation) the Circar has a claim to two viz., in the month January and June that the term new moon literally means one day but it has been always customary to collect gifts, fees and maniams, etc. presented on the occasion for two days (reckoning the day 24 hours) and one night at each moon, consequently the Government were entitled to that privilege at the two moons which occur in the above mentioned months—January and June, without any interference on the part of the Pagoda——ordered that the above mentioned evidence of the Canongoe be transmitted—— ——"–vide *Board of Revenue Consultations*, 13th February 1790, vol. 33, pp. 179–81.

40. *Board of Revenue Consultations*, 18th April 1814, vol. 636, pp. 5339–79.

41. *Board of Revenue Consultations*, 16th August 1792, vol. 88, p. 3417.

If the Government enjoyed powers of appointment, confirmation and dismissal it was mostly on the initiative of the inhabitants. When the inhabitants elected "Pumal Soubaroya" as the churchwarden of the Cabaleshwar *Pagoda,* the Board confirmed the appointment.[42] Mr. Clerk, the Collector of Trivalore recommended to the Board of Revenue that Varadarajah, the Churchwarden of Trivalore Pagoda be dismissed because "he continues to observe an improper line of conduct towards the Circar.[43] In answer to this the Board informed the Collector that unless "the Collector receives representations from the people to remove him, (Varadarajah), Board will not consider the matter of removal. But if they do receive representation they would nominate a more proper person."[44] Thereupon the Collector forwarded the petition of the inhabitants of Trivalore requesting the removal of the Churchwarden Varadarajah and the Board in their minute resolved: "In consequence of the misconduct of Varadarajah as represented by Mr. Clerk, it is agreed that he be removed from his office of Churchwarden, that Mr. Clerk be directed to collect the sense of the *Meerasdars* with respect to the persons to be nominated in his room, when this person elected will be reported to the Government."[45] On few occasions the Government took initiative. On the direction of the Board of Revenue, Collector recommended two names for the post of Overseer and Assistant warden to the Pagoda of Cabaleshwar.[46] This recommendation was accepted and the candidate appointed to the above post.[47]

The Government supervised the properties of the *Pagodas* mainly with a view to see that properties were appropriated in accordance with the terms of the deeds. In one of their consultations it is recorded, "But if the donations be made under the trust of a particular person, Government does not interfere further

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42. *Board of Revenue Consultations,* 8th July 1805, vol. 410, p. 4972.
43. *Board of Revenue Consultations,* 7th October 1805, vol. 146, p. 7415.
44. *Ibid.*
45. *Board of Revenue Consultations,* 28th January 1790, vol. 32, p. 247.
46. *Board of Revenue Consultations,* 8th February 1790, vol. 33, p. 366.
47. *Board of Revenue Consultations,* 22nd March 1790, vol. 35, p. 895.

than in right of its general superintendence to see that it be appropriated as intended by the donor."[48]

Similar privileges were extended to Muslim endowments and Mosques. When the Cauzee of North Arcot claimed an annual allowance formerly enjoyed by him,[49] the Board of Revenue directed the Collector of North Division of Arcot that "10% of the Enam were advanced to the Enamdars and if this is not enough for the Cauzee—the Collector to advance such allowance as he thinks proper."[50] In another instance the Board of Revenue "permitted *Pagoaas 8*—for the repair of the Mosque at Guntur."[51]

Often these measures were adopted not only to consolidate their rule but also to increase their revenues. Thus the Board of Revenue "Resolved that 15,000 Pagodas be appropriated to the repairs of the principal Pagodas of the Jaghir—the Board are sanguine that the repairs of these Pagodas will prove the means of creating the influx of wealth into Jaghirs."[52]

The Government assumed responsibility with regard to repair and general maintenance of temples or mosques which needed them. And it was for this that the Collector of the North Division requested that "the amount for the repair of the Pagoda at Peddapollam be sanctioned."[53] The Board of Revenue sought the permission of the Government[54] who "sanctioned the amount for the repair of the Pagoda at Peddapollam."[55] On the recommendation of the Collector of the Southern Division, the Board of Revenue agreed that "expenses of the third day's feast at Little Conjeevaram Pagoda be defrayed by the Collector of the

48. *Board of Revenue Consultations*, 28th March 1803, vol. 341, pp. 3053–61.
49. *Board of Revenne Consultations*, 14th February 1803, vol. 339, p. 1775.
50. *Board of Revenue Consultations*, 14th March, 1803, vol. 340, p. 2565.
51. *Board of Revenue Consultations*, 26th January 1797, vol. 172, p. 570. *Pagoda* – Currency of the time.
52. *Board of Revenue Consultations*, 13th October 1794, vol. 112, p. 8566.
53. *Board of Revenue Consultations*, 20th November 1794, vol. 116, p. 10159.
54. *Board of Revenue Consultations*, 10th December 1794, vol. 119, p. 12127.
55. *Board of Revenue Consultations*, 12th May 1796, vol. 155, p. 4516.

Jaghirs"[56] for the repair of the temple. "The Government sometimes allotted funds to pagodas and mosques for the upkeep of their establishments."[57]

By gradually assuming responsibilities of maintaining law and order, of collecting revenues of the pagodas and appropriating part of it for the State, of arbitrating in disputes, of administering, supervising and managing the religious institutions and finally by endowing them, the Government to a certain extent succeeded in consolidating the Company's rule.

The study of the assumption of these various responsibilities by the Company shows the natural evolution of a system of government. The nature of these responsibilities was purely police and magisterial prompted by necessity rather than by a predetermined policy. The assumption of the functions was to see that things went on in the usual manner and there was no aim on the part of the English to establish new standards.

The assumption of these responsibilities and powers led to the framing of the Regulation VII of 1817. It was the logical conclusion of the process so far adopted. In fact the Regulation VII was nothing more than the legalisation of the *status quo*. However, in the absence of a regular law of the Government not all Collectors acted in the same manner in relation to the various institutions. The need to regularise, therefore, was keenly felt. It was fulfilled by the Regulation VII of 1817.

56. *Board of Revenue Consultations*, 26th October 1807, vol. 454, p. 8322.

57. *Board of Revenue Consultations*, 6th June 1796, vol. 157, p. 5400.

CHAPTER II

LAW AND POLICY REGARDING RELIGIOUS AND CHARITABLE ENDOWMENTS—1817 to 1870

During this period the East India Company adopted a definite law. They operated it till 1839. At the end of this year, i.e., 1839, a movement was set in motion which persuaded the East India Company to disengage themselves from any activity connected with the local religious institutions. The Government thereafter began to adopt a policy of neutrality towards religious institutions. This policy operated till 1863 when it was given a legal basis in the Act XX of 1863.

Regulation VII of 1817

The Madras Regulation VII of 1817[1] was the first enactment, the Company's Government ever passed relating to religious and charitable endowments. Though the Regulation was the first one of its kind, from the study of the object and scope it was evidently an attempt to give legal clothing to actions and responsibilities already undertaken by the Company's officials. However, the blue print for the Regulation was supplied by the Bengal Regulation XIX of 1810, because in the minutes of the meeting of the Council, it is stated that the Regulation "has been compiled from Regulation XIX of A.D. 1810 of the Bengal Code from which it does not differ in any essential points."[2]

The main object of the Regulation was to see that the incomes from the endowments, both religious and charitable, were appropriated for the purposes for which they were endowed. These endowments both in money and in land were considerable and were granted, "by preceding Governments of this country as well as by the present Government and by the individuals."[3] According

1. *Board of Revenue Consultations*, 8th February 1821, vol. 876, p. 1166.
2. *Board of Revenue Cousultations*, 30th November 1815, vol. 700, p. 14139.
3. *Ibid.*

to the Regulation, the endowments were made for various purposes. Some of them were, "for the support of Mosques, Hindoo temples, Colleges and other public purposes, for the maintenance and repair of Bridges, Choultries or Chatrams and other public Buildings and for the custody and disposal of escheats." [4]

The reasons for framing the Regulation were the same which earlier compelled the Company's officials to render the necessary service to the religious institutions. The Preamble catalogues the various reasons. According to it, the endowments were being "appropriated to objects contrary to the intentions of the donars, but to the personal uses of the individuals in the immediate charge of such endowments," [5] and that it was the important duty of every Government "to provide that all such endowments were applied according to real intent and will of the granter." [6] Other reasons included the maintenance and repair of the bridges, *choultries*, and other buildings "which have been created at the expense of the Government or by the individuals, for the use and convenience of the public," [7] and, finally to provide for the custody and the disposal of the escheats." [8]

The examination of the reasons will show that the functions which the Government had proposed to take over, were already being carried out by the Collectors. The Regulation merely authorised the Collectors to supervise and protect the endowments.

The Regulation applied to the whole Presidency of Madras. In the earlier stages it was contended that the Regulation was not applicable to the city of Madras. In one of its resolutions the Board of Revenue informed the Collector of Madras that "the provisions of the Regulation VII of 1817 apply to the provinces of Madras, and are not of authority within the local

4. *Ibid.*
5. *Ibid.*
6. *Ibid.*
7. *Ibid.* pp. 14319–14331.
8. *Ibid.*

jurisdiction of the Supreme Court."[9] Later, it was established that the Government had jurisdiction over the temples in the Madras City as well.[10] Thus, the Regulation was applicable to all public endowments, except those made by "individuals subsequent to the date on which that Enactment (Regulation VII) was passed."[11] Again, the Regulation applied to those institutions whose officials were appointed by the Government or the expenses of which were met out of the Government funds.[12] That is, the Regulation applied only to public institutions and not ones which were endowed and managed by private individuals out of their own funds.[13] In order to provide for the due appropriation of the endowments, the Regulation aimed at supervision of the endowments and did not claim jurisdiction over the internal management of the institutions.[14] The supervisory machinery designated by the Regulation consisted of (a) the Board of Revenue, (b) Local agents, i.e., the Collectors, (c) Trustees, managers or superintendents who were really the managerial staff. At the apex of the machinery was the Board of Revenue in which was vested, "the general superintendence of all endowments in land or money granted for the support of Hindoo (Hindu) temples, Mosques, colleges and other pious and beneficial purposes."[15]

Under the Board of Revenue were the local agents. They were appointed in each *zillah* or district and were subject to the authority, control and order of the Board. These were the Collectors of the districts. The Governor-General-in-Council was further enpowered to appoint any other public officer to act in conjunction with him.[16] In practice the Collector of the District

9. *Board of Revenue Consultations*, 8th February 1821, vol. 876, p. 1166.
10. *Board of Revenue Consultations*, 17th March 1823, voi. 946, p. 3077.
11. *Proceedings of the Board of Revenue*, 12th July 1860, vol. 7, p. 349.
12. *Board of Revenue Consultations*, 26th April 1838, vol. 1605, pp. 4878–79.
13. This was perhaps the earliest attempt made to distinguish public from the 'private' endowments or Institutions.
14. *Board's Consultations*, 3rd March 1825, vol. 1013, pp. 1844–50.
15. *Board of Revenue Consultations*, 30th November, 1815, vol. 700, pp. 14319–14331.
16. *The Madras Code*, vol. 1, pp. 43–46.

was the only functionary. And though other public officials were expected to co-operate with him, it was rarely that any other public official (than the Collector) was entrusted with functions relating to religious endowments.

Under the above supervisory staff was the managerial staff of the trustees, managers or superintendents. These were local people who actually managed the institutions.

Each level of supervision was entrusted with a few definite functions.

The functions of the Board of Revenue

(1) The most important function of the Board of Revenue was the general superintendence of all the endowments.

(2) It was the duty of the Board of Revenue to see, that endowments in land and money or in public edifices, were appropriated for the purposes for which they were endowed and were not appropriated by anybody for private purpose.

(3) It had to provide, with the previous sanction of the Government, for the due repair and the maintenance of all public edifices. The Collector was expected to inform the Board and the Board had then to submit the necessary estimate to the Government.

(4) If the buildings were in dilapidated conditions and were rendered quite useless even after repair, the Board had to recommend to the Government, the most expedient mode of disposing them off.

(5) The Board had to superintend all escheats through Collectors and had also to recommend the most expedient mode of disposing them off.

(6) It had to appoint trustees, persons recommended by the Collectors.

(7) Finally, the Board was expected to provide for the trust, superintendence and management in accordance with the nature and conditions of the endowments.

Likewise, the local agents, i.e., the Collectors too were entrusted with a set of functions.

Duties of the Local Agents

(1) The Collector had to obtain full information from public records or through personal enquiries about the endowments, establishments and the buildings such as temples, mosques, *choultries*, *chatrams*, and the escheats. (2) They had to ascertain and report to the Board, the names and other particulars of the trustees, managers or superintendents of the several institutions, foundations and establishments, whether they were appointed or elected, in conformity with the deeds of endowments; all about the appointing or electing authority, etc. (3) The Collector had to report to the Board all vacancies or casualities with full information as to the protection of the claimants, and (4) had to recommend a suitable candidate for the appointment or nomination of a trustee. (5) It was the duty of the Collectors to recover the properties of the trusts through legal suits. (6) And the most important duty was to see that the endowments were duly appropriated for the purposes for which these were endowed.

Duties of Trustees, Managers or Superintendents

The actual administrative and managerial functions were carried out by the trustees, managers or superintendents.

(1) They were entrusted with the settlement, collection and appropriation of land revenue or land rents belonging to the endowed institutions, and (2) had to collect, disburse or appropriate as per rules of the institution, its funds, (3) They were responsible for the properties of the institutions and any embezzlement of fraud was punishable by law of the land. (4) And, finally, they were in charge of the actual management of the institution.

CHART I

Supervisory Machinery and its Function at a Glance

The Machinery	Function
The Board of Revenue	1. General superintendence of endowments.
	2. Appropriation of endowments for stipulated purposes.
	3. Repair and maintenance of public edifices.
	4. Disposal of dilapidated public edifices.
	5. Superintendence and disposal of escheats.
	6. Appointment or nomination of trustees.
	7. Provision of trust, superintendence and management of endowments as per its rules.
Local Agents—the Collectors	1. Supply of information about the following:
	(a) Name and number of endowments, establishments and public edifices.
	(b) Name and other particulars about trustees.
	(c) Name and power of appointing or electing authority for the trustees.
	(d) About vacancies and claimants to them.
	2. Recommendation of suitable candidates for appointment or nomination of trustees.

The Machinery	Function
	3. To recover lost properties.
	4. Due appropriation of endowments.
Trustees Manager or Superintendents	1. Management of the institution.
	2. Collection and due appropriation of the revenues of the endowment or institution.
	3. Custody and security of the properties of the institution.

Though the Regulation had provided for the protection of the rights of the religious and charitable institutions, it also aimed a protecting the rights of the people as against the institution. Section XV of the Regulation entitled any individual who had legitimate grounds for complaint against the action taken under the Regulation by the Board of Revenue or any other authority mentioned in the Regulation, could appeal against such orders.[17] Thus, all the actions of the Board and the Collectors were ultimately controlled by the Court.

After the machinery had been fixed and functions allotted, it became the first responsibility of the Board to implement the Regulation. The Board framed a set of rules and instructions and sent them to all the Collectors.

The following instructions were circulated among the Collectors.

(1) Every Collector was asked to send a very exhaustive information about the nature, amount and purpose of the endowments ;

(2) All the endowments were to be divided into two groups, viz., one to consist of endowments made by the Government and the other made by private individuals. These two lists had to be sent to the Board.

17. *Board of Revenue Consultations,* 30th November 1815, vol. 700, pp. 14319–14331.

(3) The Collectors had to send certain other information in the following order about each category of endowments.

(a) Endowments made by Government

1. Number of Devesthanam endowments or those for the support of mosque, temples. or other religious institutions.
2. Number of *chatram* endowments or those for the support of choultries or other charitable instititutions.
3. Number of endowments for the support of colleges, schools or other institutions attached to the education.
4. Endowments of a miscellaneous nature for the support of any other public institution.
5. *Shotriums*, *Macassaha*, Enams or other endowments to individuals for various pious and beneficial purposes.

(b) Endowments made by the private individuals

1. Number of Devasthanam endowments or those for the support of mosques, temples or other religious institutions made by individuals.
2. Number of chatram endowments or those for the support of choultries or other charitable institutions made by individuals.
3. Number of endowments for institutions connected with education.
4. Miscellaneous endowments by individuals.

(4) Having furnished the lists, the Collector had to inform the Board, the amount of revenue or property belonging to each of these institutions, the manner in which it was collected, or appropriated, the nature of the establishment for its management.

(5) In the course of his enquiry, the Collector was expected to give suggestions for the improvement of the institution.

(6) At the same time, the Collectors had to bear in mind the various duties devolving on them by virtue of the Regulation.

(7) The Collectors had to detect fraud or embēzzlement of funds by the trustees, managers, who were amenable to punishment dealt under the provisions of the Regulation.

(8) Every escheat in his jurisdiction had to be reported to the Board of Revenue by the Collector. He was also to recommend the best mode of disposing of the proparty.

(9) The most important of the instructions was the nature of supervision which the Collectors were to exercise over the endowments. While explaining the object of the Regulation, the Collectors were informed that, "this Regulation is to protect the existing institutions from abuse"[18] and they were to strictly carry out the intention of the endowment. At the same time the Collectors were instructed, "to aid and not to impede by direct Sirkar interference, the management of private endowments ....and the duty imposed on you by the Regulation.........is that of a general superintendence, not detailed management."[19] It was later impressed upon the Collectors that their first duty was "obtaining (at) as early a period as may be practicable a correct knowledge of the several endowments and institutions referred to."[20] They had to confine themselves to the above enquiry and "not to disturb any existing mode of administering the concerns without a previous reference to the Board and the receipt of their orders."[21]

Thus the two main functions of the Collectors were:

1. to carry out the enquiry in accordance with the instructions, and

2. to superintend the endowments so as to ensure that the funds were appropriated for the purposes for which they were endowed and they were *not*[22] to interfere in the internal management of the institutions. They were definitely informed that "you

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18. *Board of Revenue Consultations*, 20th November 1817, vol. 733, p. 14152.
19. *Ibid.*
20. *Ibid.*
21. *Ibid.*
22. Emphasis added.

have no concern whatever with the ceremonies of the temples nor with the funds or other property further than to see that they were employed in the *usual* manner *and for the benefit of the* institution."[23]

Thus Regulation entrusted the Board of Revenue and the Collectors with supervisory functions and gave them absolutely no control over the internal administration of the religious institutions. While there were instances when the Company's officials managing the internal affairs of some institution prior to the Regulation, they were now forbidden to do so. When the Collector of Madras interfered in the internal management of the Triplicane Pagoda, the *Darmacurtah* of the Pagoda, while tendering his resignation, protested that the chief object of his accepting the appointment was "the distinction...........besides intending to expend my money on charitable purposes............for the glory of God...........But the Collector of Madras misconceiving my motives and paying no regard to powers vested *in me* by the Deed...........issues orders as if I was a mere Ameen in his service and on matters unworthy of his notice."[24] The Board, though accepted the resignation, reprimanded the Collector saying that they "regret to observe the situation and to lose the service of such a legible and opulent trustee."[25]

The Regulation which was enacted in 1817, operated till 1839. During this period, many of its objects were achieved. Supervision being thorough, the endowments were protected better and appropriated for the purpose for which they were endowed Commenting on the system of supervision of the religious institutions by the Company, Sir T. Muttuswami Iyer in the Statement of Objects and Reasons to his Bill of 1893, states, "the period between 1817—1839 was marked with general satisfaction."[26]

The history of association between the Company's Government and the religious institutions from 1600 to 1839 describes

23. *Board of Revenue Consultations,* 11th June 1818, vol. 794, pp. 6995–7002.

24. *Board of Revenue Consultations,* 12th July 1832, vol. 1330, pp. 6407–10.

25. *Ibid.*

26. G. O. 15, *Legislative,* dated 9th March, 1893.

conscious efforts on the part of the Government to gradually control and supervise the endowments. Thus, up till 1839 the English carried out the Indian ideology of Kingship which demanded of the King not only that he proclaimed his religion but also that he protected and maintained the religious institutions of the people.[27] They did not undertake actual management of the religious institutions.

Therefore, by undertaking to protect and supervise the religious institutions, the Company gave to its administration that familiar tone which political stability demanded. It was not difficult for them to stabilise their rule after the fall of the Carnatics.

But, a new movement sets in from 1839 onwards and the policy of the Government towards endowments changes. The Court of Directors decide to withdraw the control and supervision and hand over their functions to the natives.

Disengagement 1833—1863

It was during the period 1833–1863 that the Court of Directors' sudden but important decision to sever all connections with the Moslem and Hindu religious institutions was implemented and the Regulation VII of 1817 was repealed.

Similarly by the 1830s the polytheistic liabilities of the Company had considerably enlarged and in 1833 the Madras Govrnment reported to the Supreme Government that the administration of 7600 Hindu shrines was vested in the Government. The local religious institutions appeared never to have received the same measure of support as they did now. The Christian institutions on the other hand did not receive the same favours. There was a standing order of the Board of Revenue that the missionaries should be prohibited from receiving lands rent-free for their missionary purposes even though the Hindu and Moslem institutions were granted such lands for religious purposes.[28]

27. *Travancore Archaeological Series, op. cit.*, p. 108.

28. *Standing order of the Board of Revenue, Madras*, No. 142, dated 17–4–1837.

Any support for the Christian missionaries would have been impolitic.

This attitude of the Government naturally irritated the missionaries and other Evangelists. They complained that while native religious institutions were endowed, it was impossible to get money allotted even "for the building of churches and the Director of economy was keeping the chaplains' post unfilled."[29]

A topic that excited a frequent and painful controversy in weeklies like the *Friend of India* (1833), *Quarterly Calcutta Review* (1844), and dailies like *Har Karu*, among missionaries Alexander Duff and Marshman of Bengal, Wilson of Bombay and in Parliament, was the official attitude of the Government towards idolatry. And round about 1837, a memorial against the official patronage of the local religious institutions was signed by two-hundred representatives of the eccelesiastical, civil, military departments and the non-official world and was submitted through Bishop Corrie to the Madras Government.[30] "The Dry Nurse of Vishnu" and "the Churchwardens of Juggernout" as the governors and administrators were called, were exposed to a full-blast of bitter criticism for their policy. It was also widely believed by these Evangelists that due to the support of the Government, there was already a boom in the indigenous religions were gaining more adherapts and were making their own mission all but impossible.

As this propaganda was going on in India, son of Charles Grant (who was one of the Company's most esteemed servants and one time President of the Board of Control) was filling the mind of the President of the Board of Control with evangelical ideas. The President, therefore, finally decided to placate the missionaries by following a policy of neutrality against the native religions.

29. Arthur Mayhew, *Christinity and the Government of India*, London, 1929, p. 150.

30. *Ibid.* p. 144.

In 1833, when the memories of humiliating concessions enforced in the revised charter of that year were still fresh, the Directors decided to review the situation. In a despatch to the Government of India, they opined that toleration and civil protection of religion must no on account be converted into patronage of what was at variance with precepts and practices of Christianity. The despatch was followed by an enquiry from the Supreme Government to furnish them information "respecting the revenues and charges of the Hindu and Mohammedan religious establishments under the Presidency and the probable financial result of the proposed measure relinquishing all interference with their revenues..........."[31]

The above proposal was obviously to withdraw all control and sever connection with the management of religious institutions. The proposal had three aspects: 1. revenue; 2. administrative; 3. management of lands.

In dealing with the revenue aspect of the problem, the Board of Revenue replied that if the Government continued to pay all the customary allowances and relinquished the control of the management, the net loss in revenue from land and other sources would be Rs. 81,636-0-11. Whereas, if the revenues were to be given up and the allowances were also to be stopped, there would be considerable saving to the Government. Since the allowances had to be continued, there would be a heavy loss to the Government."[32] From the administrative point of view, the proposal was difficult and "impracticable" because there was no recognized head of the 'institution.'[33] It was admitted that though this problem was a difficult, it was not impossible to solve.

It was also argued that lack of supervision by Government official would lead not only to mismanagement in the internal affairs but also loss of property of the institution. Commenting on the proposal, the Collector of Cuddapah wrote, "the managers

31. *Board of Revenue Consultations*, 21st April 1836, vol. 1501, p. 6121.

32. *Board of Revenue Consultations*, 29th May 1837, vol. 1559, pp. 6110–6133.

33. *Board of Revenue Consultations*, 1st October 1838, vol. 1628, pp. 12845–58.

of lands belonging to Pagodas are now deterred from alienating them, because the Collector can interfere where such abuse comes to his knowledge, but if it was known that he was prohibited from doing so, there would be no limit to this misappropriation that would follow......and when Pagodas are supported by lands alone, withdrawal of Government's interference would be equivalent to their destruction within no distant period.........This is the universal opinion of the natives themselves.........and would be looked upon as a breach of implied pledges of protection and support on the part of the Government."[34]

The handing over of the management of lands was a more difficult issue than the administrative one since it affected not only the institutions but also the *ryots* (farmers). Therefore, the Board of Revenue, the Collectors and the senior officials were opposed to this proposal. The various disadvantages cited by them which would result from the process of withdrawal were: (a) The revenues of the lands would diminish if managed by Pagoda servants without governmental supervision and (b) that the means of irrigation would not be maintained in proper order, there by resulting in the loss of productivity of soil.[35] (c) Their last argument was that the interest of ryots would suffer for, the facilities which the Government afforded, would be denied by the managers of the religious institutions.[36]

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34. *Board of Revenue Consultation*, 1st October 1838, val. 1628 pp. 12845-58.

35. The Board of Revenue argued: "In cases of lands held immediately of Government, there is a systematic attention to the means of irrigation; the requisite repairs are made promptly and efficiently......If an accident occurs by the bursting of a tank or breach of an embankment........... the damage will be repaired before next season arrives. In a village belonging to a Pagoda and under the management of its officers on the contrary, such an accident would probably be fatal to its prosperity ....and it is likely that from the neglect of ordinary repairs the reservoirs and channels would gradually go to decay and cultivation would decrease from year to year" ....vide *Papers submitted to the House of Commons in connection of the Government of India with Idolatry or with Mohammedanism* p. 420.

36. It was submitted in this connection: "The security of the government revenues......was seldom, if ever, the main object for the latter purpose

These apprehensions did not deter the Court of Directors from their earlier decision. Acting on this the Government of India communicated to the Government of Fort St. George that, "the opinion of the Hon'ble Court of Directors that the measures which have been fully carried into execution in every other part of British India for withdrawing from interference with native religious establishments should now without further delay be completed under the Madras Government and requesting that the immediate consideration may be given to the best mode of fulfilling the instruction of the Hon'ble Court of Directors."[37] And this disengagement, was to be final and complete.

The general principles of withdrawel were laid down by the Governor-General-in-Council. They were, (a) that the management of the religious institutions should be left to those best qualified and belonging to the same faith as for which the institution was established and these officials together with their subordinates were to be held responsible to the Court of Justice for any breach of duty or trust, (b) the lands were to be managed by the Revenue officials but the proceeds were to be given to the native administrators of the religious institutions.[38]

Along with the general instructions, the Board of Revenue directed the Collectors to pay special attention to the local conditions, popular feelings and prejudices. They were to specially impress upon the people that the object of the Court of

(i.e.,) for resumption of lands) I concur with the Board of Revenue and many other Collectors.........in thinking it advisable to retain the management of lands for the sake of ryots.........It would be prejudicial to the ryots to make them responsible for the lands which they have so long held immediately under the Government, with all the advantages of a system which provides liberally for adversities of season and other misfortunes, and has a considerate regard to the means on general, not pressing the demands against extremity, and freely remitting balances which cannot be immediately recovered.........'' vide *Papers submitted to the House of Commons on connection of the Government of India with Idolatry or Mohammedanism* - p. 421.

37. *Revenue Consultations*, 15th June 1841, No. 19-24, p. 4318.

38. *Ibid.* p. 4335.

Directors was to leave the management of the religious institutions to the people of the locality without any kind of interference from the Revenue officials and that the Government had no intention of withholding any authorised or customary payments and allowances.[39]

The process of withdrawal began in 1841, and the following method was adopted to hand over the religious institutions to the local people.[40]

(1) Small village Pagodas, the majority of which were generally not under the charge of Government, were handed over to the *Poojari* - a single functionary entitled to mere fees.

(2) Larger temples with more considerable endowments were delegated to a committee or Panchyats consisting of two or more influential persons of the locality, including the official head of the village or *Curnam* and the *Poojari.*

(3) Endowments belonging to maths were left to the parties concerned.

(4) Temples in which the whole Hindu community was interested like the Tirupathi, Conjeevaram, Tiruvellore, Trinomalle, Srirangam were handed over to *Mahants*, *Durmacurtahs*, Trustees, or Committee of influential local people.

While the management of the religious institutions changed hands the complete severance of connections could not be easily brought about. Three problems remained to be solved namely, (1) the management of endowment lands, (2) the commutation of allowances into endowments of lands, and (3) the disposal of surplus funds.

After much deliberation in 1854 almost all lands were handed over to the managers of the Pagodas and in lieu of those lands which had been resumed long ago and whose origin could not be traced, *tasdick* allowances were paid.[41]

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39. *Board of Revenue Consultations*, 24th June 1841, vol. 1760, pp. 8134-38.
40. *Board of Revenue Consultations*, 15th June 1841, vol. 2026, p. 7724.
41. *Board of Revenue Consultations*, 14th September 1854, vol. 2435, p. 12779.

The payment of *tasdick. yeomiah,* and allowances for the performance of special ceremonies, themselves maintained the link between the Government and the religious institutions. Though it was decided as early as 1846 to commute these allowances into grants of lands, very little progress was made till 1861. The Board of Revenue then requested the Government of India to enunciate principles for the guidance of the officers for commuting these allowances into grants of lands.[42] Accordingly the Government of India enunciated the following principles.[43]

(1) Just equivalent in land for the present payment;

(2) Trustee to choose any description of land;

(3) If cultivated lands were taken, 10 percent of allowances for vicissitudes of season, expenses of management, etc; if waste land 15 percent or 20 percent allowances were to be paid to the Government.

(4) If land was already on occupation, the ryots to pay to the Government,

With regard to *yeomiah* allowances, besides these conditions, the personal grants were to be commuted at the option of the recipient for a single money payment, and if the community was interested in the performance of service, the grant should be in the shape of lands.

The allowances for special (religious) ceremonies were discontinued in 1852.[44]

The *maniam* allowances and the services which were not being performed escheated to the State.[45]

The solution of the third problem, that of the surplus fund, presented similar difficulties. According to the statement of the

42. *Board of Revenue Proceedings,* 14th October 1861, vol. 10, pp. 200–204.
43. *Board of Revenue Proceedings,* 9th July 1863, vol. 1, p. 3914–15.
44. Standing order of the Board of Revenue, No. 183, dated 23-9-1852.
45. *Board of Revenue Consultations,* 5th February 1852, vol. 2318, p. 2032.

Accountant-General, the surplus was Rs. 8,71,118-7-3.[46] The question was whether the surplus be handed over to the religious institutions or whether after allotting a sufficient amount for the maintenance of the institutions and the celebration of festivals, the remainder be spent on useful projects like education, construction of roads, bridges, etc. The same problem had earlier presented difficulties. Since the Government (Executive) was the only organ empowered to take decisions and make policies, they had more than once diverted the funds belonging to religious institutions for secular purposes.[47] In one of these two precedents the Supreme Government in an important despatch, directed the Government of Madras that the surplus funds, "be devoted to the public utility, preference given to the locality, when surplus is to be expended—from which it was derived—education being the first legitimate object to which it could be applied. Likewise, funds of deserted institutions be used."[48] This was a significant and also an extraordinary decision, especially during the period under study, because

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46. *Board of Revenue Consultations,* 15th June 1846, vol. 2026 p. 7724-7752.

47. The earlier instances of diversion of funds were in 1824 and 1838. In 1824, the Court of Directors wrote, "the difficulty is how to interfere so as to prevent the misapplication of the funds to mischievous purposes, without exciting the religious jealousies of the people. But yet we doubt not. that a line of conduct may be drawn by which, without infringing our religious liberty, or interfering with the most jealous scruples of the people, not only evil, where it exists, may be avoided, but something useful, especially in the shape of education, may be connected with the expenditure, of the revenues often very large, of the native temples".

And, a despatch dated 7th May 1838 from the Court of Directors quotes another instance..."We are anxious that the principle hitherto observed of keeping the Pagoda funds entirely separate from the Government revenue, should be rigidly maintained. We are of opinion that all funds and endowments should be on the first instance, appropriated if possible, to the original purposes, and when the funds are more than adequate to that end, instead of allowing them to accumulate without limit, they should be appplied to purposes of' general utility taking care that particular districts in which the endowments are situated should derive full benefit from the new appropriation of the surplus".—vide *papers on connection of Government of India with Idolatry*—p. 276-277.

48. *Board of Revenue Consultations,* 15th June 1846, vol. 2026, p. 7724-7752.

the funds were diverted to purely secular purposes. It thus raises the problem of management of surplus funds of religious institutions.

This policy of severance gained momentum with the Indian Mutiny. As the dust of the Mutiny was settling down, the English realised that a policy of absolute neutrality in religious matters must be observed for the safety of the empire. This decision was reiterated in Queen Victoria's Proclamation of 1858. The message of the Proclamation was conveyed by the Secretary of State to India, to the Indian Government thus, "it is the duty of the Government of India that these institutions enjoy equal and impartial protection of the law, but it is not called upon to provide especially for their management or superintendence by its own officers."[49] The Government of India was requested to repeal, without delay, the Regulations or those parts of the same which related to the religious institutions. At the same time the Government of India was asked to make "provision—for appeal to the established courts of justice in all disputes relating to the appointment and succession to the management of Hindu and Mohammedan religious institutions and to the control and application of their funds."[50]

What had happended was that the *Government had actually* withdrawn the control but had not substituted a new machinery for the old. A vaccuum thus created doubt and cauced great confusion. The inevitable result of such a situation was that, "trustees were under strong temptation to embezzle temple funds as the check produced by the general law, in the absence of an active supervisory agency, was utterly inadequate to meet the exigencies of the case—mismanagement prevailed without check—and misappropriation of temple funds became a thing of frequent occurrence. The evil grew from had to worse until it came to a head about the year 1860 or 1861."[51]

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49. *Despatch from Secretary of State, No. 2, Legislative,* dated 24th February 1859.

50. *Ibid.*

51. *G.O.* 1066, *Public,* dated 23rd September, 1899.

The Act of 1893

To improve matters the Religious Endownments Act XX of 1863 was passed. The object of the Act was to enable the Government to rid itself of all direct connections with the superintendence of religious establishments and transfer its functions to committees made up of local people. The Act repealed those parts of the Regulation XIX of 1810 of the Bengal Code and Regulation VII of 1817 of the Madras Code, which related to religious institutions.

The Act XX of 1863 was substituted for the Regulation VII of 1817 in the Madras Presidency. Though the real object of the Act was to give equal protection to the religious institutions and the funds of the endowments, by general admission, it failed to do so.

Background

During the "no law period,"[52] 1842 to 1863, and before the passing of the Act XX of 1863, several attempts at legislation were made. One such attempt was in 1842 when the Sadar Adalat forwarded a draft Act to the Government.[53] The object of the draft was to sever the connection of the Government from the local religious institutions and to let the people professing the same religion as that of the institution manage its affairs. According to this draft Bill, the Government in their control of the trustees, managers or superintendents of the institutions, were to be guided by the established custom "as though the controlling authority was never in their hands."[54] These officials were also expected to manage the institutions according to the established custom. The right to the office of a manager could be disputed by a petition to the Government and the latter was to direct the Collector to investigate and decide. An appeal to the Government against such a decision of the Collector was also provided for. The accounts were to be checked by "3 lawful principal

52. *G.O.* 1975-A, *Judicial*, dated 23rd October 1872.

53. *Board of Revenue Consultations*, 3rd November 1842, vol. 1828, p. 13670.

54. *Ibid.*

inhabitants residing within 5 miles of the Mosque, temples, etc."[55] In case the managers refused to submit the accounts, the Collector was empowered to appoint a Commission of Enquiry into the conduct of the managers. He also had the power to investigate and punish an act of fraud. The vesting of these powers in the Government seemed to defeat the very purpose of the draft Bill. The Board of Revenue observed, "the Government and the Board of Revenue are directly connected......very much against the instructions of the Court of Directors."[56] The draft Bill failed to be enacted.

The second attempt was in 1846, when the Government of India transmitted to the Government of Madras a draft Bill. It aimed at repealing the Regulation XIX of 1810 of the Bengal Code and the Regulation VII of 1817 of the Madras Code and appointing a committee of "respectable natives."[57] The function of the Committee was to supervise the affairs of the religious institutions. The Government had also the power of filling the vacancies from time to time and suing the manager, superintendent, and others connected with religious institutions for acts of fraud. The members of the Committee were also liable to prosecution at the instance of any person conceiving himself to be aggrieved by these acts.

This draft also failed to sever the connection of the Government with religious institutions and failed to carry out the object of the Court of Directors' despatch and met with the same fate as the earliar draft.

In 1860, Sir Bartle Frere introduced in the Legislative Council a bill to repeal the Regulation VII of 1817,[58] and to leave the administration to the local people. It provided for a *committee* of trustees. The trustees in office were to be confirmed, the hereditary ones were to be recognized, and vacancies to be filled

55. *Board of Revenue Consultations*, 3rd November 1842, vol. 1828, p. 13670.
56. *Board of Revenue Consultations*, 21st November, 1842, vol. 1833, p. 15138.
57. *Board of Revenue Proceedings*, 19th November 1846, No. 9-16.
58. *G.O.* 1586-87, *Revenue* dated 13th September 1860.

by election. A Committee of Audit of not less than three and not more than seven, elected by those who elected the trustees, was to audit the accounts and grant certificates if accounts were correct. With the permission of the Committee, the trustees could still be criminally prosecuted for fraud. Suits relating to rites and ceremonies could be referred to Civil Court or Panchayat whose decision was final except on ground of gross corruption. The Court were to appoint members to the Panchayats and they to belong to the same sect as the religious institution.

Sir Charles Trevelyan, the President of the Board of Revenue agreed with the object of the Bill. He observed, "If our Judges are left free to adopt the remedies to the special circumstances of each case—either insisting upon accounts being rendered or appointing trustees on the recommendation of trustworthy persons—they will be much more likely to save the endowments from depredation than if they are trammelled by detailed Regulations which must be inapplicable in the majority of cases—I am of opinion that Regulation VII of 1817 be repealed and endowments be placed under the protection of the Court of Justice like every other property, more than this would be over legislation and over government.[59]

Walter Elliot, a member of the Board of Revenue, opposed the repeal of the Regulation VII and leaving the most valuable properties beyond the pale of the law. Instead, he argued that the Collectors be made to audit the accounts and bring the culprit to the notice of Public Prosecutor for criminal procedure. He and Hon'ble Mr. Morehead, another member of the Board of Revenue, believed that the endowments would be utterly wasted if left to the care of the Courts which could not act unless encouraged to do so. Elliot commented, "who then is to initiate the proceedings? The trustees will not, unless they quarrel among themselves; communities will not, self-interest prompts individual to fly to law. But the public, and least of all, the native public has no such motive. What is the business of all is undertaken by none.[60]

59. *G.O.* 1586-87, *Revenue*, dated 13th September 1860, No. 202.

60. *Ibid.* No. 204.

Since the views of these officials varied so greatly, the Government of Madras transferred the papers to the Government of India without giving any opinion as to the direction to be undertaken by the Legislature on the subject.

Provisions of the Act

Since all attempts at legislation had proved infructuous, the Imperial Legislature, twenty years after the Government had virtually disconnected themselves from the administration of the religious institutions, legalised the severance. The Religious Endowments Act XX of 1863 finally enabled the Government "to divest itself of the management of religious endowments."[61]

The Act applied to all the public Hindu and Muslim religious endowments in the Presidencies of Bengal and Madras. Jurisdiction of the Act did not extend to Malabar. In practice neither the Regulation VII of 1817 nor the Act had applied to Malabar owing to the exceptional conditions prevailing there.[62] But on accounts of an appeal from the Jain community, the Act extended to the Jain institutions also.[63]

The Act divided all public religious endowments into two classes which were described in Sections (3) and (4). The first class of endowments comprised those in which the nomination of trustee, manager, and other administrators was vested in the Government, whereas in the other, the Government did not participate in their the selection.[64]

In the case of the first category of institutions, the procedure to be followed was detailed in Section 7 to 12 of the Act. For the superintendence of these institutions, Government were to appoint once and for all local committees of three or more persons to

61. *The Unrepealed General Acts of the Governor-General-in-Council* (1898), vol. I, pp. 405-412.

62. *G.O.* 3198, *L. & M.*, dated 27-7-1926.

63. *Board of Revenue Proceedings*, dated 20-1-1864, vol. I, p. 349.

64. This conforms to the earlier attempt at distinguishing *public* from *private* temples.

take the place and exercise the powers of the Board of Revenue, under the Regulation VII of 1817. The members of the committees were to be appointed from persons professing the same religion as the one the institution belonged to and in accordance with the general wishes of those who were interested in the maintenance of that institution. For the purpose of ascertaining the general wishes of such persons, the Local Government were entitled to cause an election to be held under such rules as might be framed by them. Every member of the committee thus appointed should hold office for life, unless removed for misconduct or unfitness by an order of the Court. Vacancies were to be filled by election. No member of the committee could also be a trustee or manager, of the institution under its jurisdiction. After the committees had been formed the Board of Revenue and the local agents functioning under the Regulations were to transfer to them (committees) the properties of the endowments in their possession or under their supervision.

In the case of endowments belonging to the second category, the management and properties were to be left in the hands of the then trustees, managers, or superintendents, who, though free from the control of the local committees, were liable to be sued by any person interested in them for any breach of trust or neglect of duty, and were subject to criminal prosecution under the general laws for the criminal breach of trust. Vacancies could be filled by the appointment of a manager by the Civil Court, on the appeal from any person interested in the institution. The manager was to act unless his right to the office was challenged by a civil suit.

The position was that in the first category of institutions in which the right of the appointment was vested in the Government, the control of the committee was substituted for that of the Board of Revenue and the Collectors; for the second category of institutions, there was no such control by any committee except the Court. The trustees, managers, and those concerned with management of both the types of institutions were entursted with the duty of keeping accounts. However, the institutions of the first category had to submit their yearly accounts to the committees.

The Act provided for an important provision whereby any person interested in a religious institution could institute suits against trustees, managers, superintendents, or members of the Committees for any act of fraud, breach of trust, or neglect of duty and also empowered the Court to direct the specific performance of duty, award damages and remove trustees and managers. Besides any person having a right of attendance, or having been in the habit of attending the performance of the worship or service, partaking in the benefit of any distribution of alms, etc., was considered to be a person interested within the meaning of Section 14. Section 18 provided for the preliminary enquiry by the Court before a suit could be instituted in the Court. It further provided that if the Court was satisfied that suit had been brought for the benefit of the trust and no party to be blamed, it could direct the cost to be paid out of the trust estate. The Act expressly provided for the reference of any matter in disputes in such suit to arbitration. The Court was empowered before and after giving leave under Section 18, or during the proceedings, to call for the accounts from the trustees, managers, or members of the committees.

Where endowments were partly for religious and partly for secular purposes, the Board of Revenue was allowed to determine what portion of the endowments should remain under its superintendence for secular purposes and what portions were to be transferred to the trustees. The Government's control remained unaffected with regard to non-religious and charitable trusts.

The Act was placed on the Statute book on 10th the March, 1863. From one angle, the Act attempted to introduce a measure of self-government in the field under study. For the first time, the principle of direct election was sought to be introduced in the country in sphere of religious institutions, where it was felt that the local people ought to have a direct control of management. In keeping with this democratic spirit, the Courts were also given ample powers to take note of acts of misfeasance, neglect of duty, etc.

In order to implement the provisions of the Act, the Collectors first formed committees and saw that neither the members of the Government nor the trustees became members of the committee.[65] The Government framed rules for election of members to the committees, laid down the procedure, and fixed the qualification of the candidates and electors. It was stipulated that the vacancies would be filled by the rest of the members of the committee conducting the election.[66]

As stated earlier this Act, which was intended to provide protection for religious endowments, proved by general admission to be a signal failure due firstly to the inherent defects in the structure of the Act and secondly to the attitude of the people. Some of these defects were :

(1) The classification of the endowments in the two categories as described above was considered arbitrary and defective. It was believed that a better classification would have been, those managed by public funds and those by private funds.[67]

(2) Life membership was another defect. No doubt, in certain cases it helped the institutions to retain the services of honest and experienced people, but in many cases when the members were corrupt or dishonest, it became a great liability. It was also argued that "old age and imbecility are quite incompatible with the proper and efficient discharge of public duties."[68] The provision of removing the members was too tardy and risky to be undertaken by people 'interested'.

(3) Section 18 of the Act provided for a preliminary enquiry before a suit could be filed, the object being to avoid frivolous litigation, and secure a prima facie a *bona fide* suit. But in practice it proved unhelpful, both to the condemner and the condemned. The former could not himself marshal the facts since the accounts

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65. *Board of Revenue Proceedings*, 1st July 1863, vol. 1, pp. 3716–17.

66. *Board of Revenue Proceedings*, 7th June 1865, vol. 6, p. 2947.

67. *G.O.* 118, *Judicial*, dated 31—10—1872.

68. *G.O.* 299, *Public*, dated 10—3—1914.

were never published, and the latter, if judged in the enquiry as guilty could not hope to be judged impartially during the case. "The judge who had to try him, had already made up his mind against him so far, that he could not bring to the trial a mind without a bias. He could not, as matters stand now, help becoming—a grand jury, a police-man, a judge rolled into one. This state of things is utterly inconsistant with justice either to the plaintiff or to the trustees."[69]

(4) Section 13 of the Act required the committees, the trustees and managers to keep regular accounts of the receipts and disbursement, but owing to a flaw in the Act, this purpose was defeated. There was no provision for regular scrutiny and publication of the accounts especially of the committees. There was also no provision for audit. When the local people and a few committees like the Rameswaram Devasthanam Committee requested the Government to direct the local audit staff of the Accountant-General's office to audit their accounts, the Government, in keeping with the policy of neutrality, declined to do so. The result was that accounts were rarely kept and those which were kept, were very often fictitious.

(5) The Act also failed to provide for expenditure on the maintenance of the establishment of the committees. The Governor-in-Council of Madras pointed out the lacunae to the Government of India, advising them to rectify the defect.[70] But no action was taken.

(6) Since the members of the committees were not paid, they had no sufficient inducement to discharge their duties honestly.[71]

(7) The powers of the committees were neither properly nor clearly defined and did not enable them to deal effectively with disobedient and negligent trustees or managers, etc. The Act merely said that the powers which hitherto belonged to the Board of Revenue and the Collectors were to be exercised by the commit-

69. *G.O.* 501, *Public*, dated 3—5—1897.

70. *Legislative Department Proceedings*, dated 2nd November 1864, p. 81.

71. *G.O.* 1975 (A), *Judicial*, dated 23—10—1874.

tees. In the first place even the Regulation VII of 1817 was quite vague about the powers of the Board of Revenue and those of the agents, but due to their official position, they could compel the trustees to carry out their orders. Under this Act, however the committee's orders of suspension, dismissal, ejection of the trustees, managers, or holders of the religious *inam*[72] for any gross neglect of duty or other crime, were of no value, in as much as there was no provision in the Act to put the nominee of the committee in the immediate possession of the office or the land. The result was that, every delinquent holder of office or *inam* had to be proceeded against in the Civil Court especially in the Telugu districts of the old composite State of Madras. And the institution of suit for ejection was too tedious and costly to be ventured by the committees in view of their own pecuniary difficulties on the one hand and the affluent position of their adversaries on the other.

(8) There was no provision in the Act for the proper preparation and revision of the lists of voters, the result was that many of the lists were neither complete nor current to include all the qualified people on the roll.

Not only the inherent defects of the Act, but also the personnel of the committees, the character and status of trustees and the attitude of the people rendered the Act too weak and ineffective to protect the properties of the trusts.

An examination of the composition of the committees shows that by 1912, out of the twenty six districts of the old composite State of Madras, six districts had neither Hindu nor Muslim committees.[73] Though it is true that these districts were neither better off nor worse off due to non-existence of the committees.[74] In

72. *Inam*: A gift of rent free land. Vide H. Yule and A. C. Burnell, *Hohson-Johson, A Glossary of Anglo-Indian Colloquial Words* and Phrases, London, 1903, p. 433.

73. *G.O.* 339, *Public*, dated 15—3—1911.

74. *G.O.* 661, *Public*, dated 23—6—1911,

districts which had the committees, no attempt was made to maintain a proper ratio between the number of committees and the number of institutions.[75] Though it was laid down that the remaining members of the committees were to conduct elections and fill the vacancies, this was seldom done with the result that most of the committees were often undermanned. The character and status of many members of the committees and trustees, were not satisfactory. Most of them were "paupers, corrupt, infamous, unpopular, unscrupulous (or) indifferent."[76]

The people and their attitude were also partly responsible for the failure of the Act. The Act introduced the principle of direct election but being unfamiliar with this technique, which had not till then been introduced even in institutions like municipalities and corporations, the people could not take advantage of them. The people were, no doubt, concerned about the wastage and ruin of the religious funds, but they preferred the Government to take the initiative. For example, when the Collector of Madras was engaged in constituting the committee, he was faced with certain difficulties. He reported to the Government that the people on the whole were not inclined to exercise their electoral rights and preferred selection by the Collector to elections. They wanted even the qualifications to be raised.[77] It was not an attitude of indifference but a question of habit and belief. They were used to the idea of the Kings controlling their religious institutions and endowments, they therefore felt that it was the responsibility of the Government (even when it happened to be alien) to look after these institutions. The numerous petitions, memoranda and addresses to the Government made one constant appeal that the Government should give up its policy of neutrality in this sphere and set up a machinery to manage these institutions. Though a movement had set in either to alter or scrap the Act, the people did not take on the responsibility of organizing the affairs of these institutions. Of course, there

75. *G O.* 339, *Public,* dated 15—3—1911.

76. *Ibid.*

77. *Board of Revenue Proceedings,* 2nd October, 1863, vol. I, p. 5843.

was an association called *Dharma Rakshana Sabha* which did a great deal of good work in ventilating the grievances of the people with regard to the affairs of their religious trusts, but beyond this, it could do nothing. People preferred the action to be taken by the Government rather than by themselves. However, this popular clamour for reform did result in compelling the Government to bring in interin measures of relief and to set up committees to draft bills on the subject of the religious endowments.

CHAPTER III

LEGISLATION RELATING TO RELIGIOUS ENDOWMENTS: 1870-1927

Since the Act of 1863 had failed to protect the properties of the religious endowments, several attempts at legislation were made during the late 19th and early 20th century to remedy the defects in the Act. Between 1870 and 1920 twelve such attempts were made either at Madras, Bombay or Calcutta. Though none of them were placed on the statute book, they did not fail to develop certain ideas. These ideas were later incorporated in the Act I of 1925 which repealed the Act of 1863.

The misappropriation of the funds of religious institutions was wide spread not only in the South but in other parts of India as well. Mr. A. O. Hume, officiating Secretary to the Government of India, Home Department, observed the fact in his despatch to the Government of Madras, wherein he said, "The funds of religious and charitable endowments in certain portions of the lower provinces are to a very great extent squandered, misappropriated by the Managers and Trustees who administered them and the Governor-General-in-Council fears that evils and abuses of this nature now brought to light prevailed to a greater or lesser extent all over India."[1] It was therefore thought necessary to have a remedial measure of general application. It was also laid down by the Government of India that the proposals should abide by the leading policy of the Act of 1863, whereby withdrawal of the Government from every active concern with the management of the religious endowment was contemplated. The new proposals had to fit within this frame-work and acquire previous sanction of the Government of India under Section 43 of the India Councils Act of 1861 and Section 5 of the India Councils

1. *G.O.* 118, *Judicial*, dated 31—10—1872.

Act of 1892 before they could be introduced in the Local Legislative Council.

Measures in the Madras Legislative Council 1874 – 1900

The first measure was brought in 1871 by Mr. V. Ramiengar, a member of the Madras Legislative Council.[2] The main object of the Bill was to secure a close and careful annual scrutiny of the accounts of the revenues and disbursements of several religious institutions, and to ensure that the application of funds were indeed being applied for purposes for which they were originally granted. In order to implement this object, the Bill contemplated a material change in the constitution and powers of the local committees. It turned them into district auditing committees with the main function of auditing the accounts of religious institutions. The Bill was circulated among officials of the Revenue and Judicial departments and among a few leading men. The general verdict on the Bill was that it was inadequate. The Board of Revenue expressed the view and the Government of Madras concurred, that, "although the Bill would be an improvement on the existing law, it was radically incomplete and would certainly fail to attain its object."[3]

The Government of Madras thereupon set up a new Committee with Sir William Robinson, as its President.[4] The Committee submitted its report and a draft Bill in 1877.[5] The Bill widened the scope of the Act of 1863 and included all the religious endowments which were hitherto excluded from the supervision of the local committees. It proposed to abolish local committees and centralise the authority in a handsomely paid Central Board of Commissioners at Madras with a staff of Inspectors and Auditors, to control and regulate the administration of the *Devasthanam* endowments. The executive power was vested in the local trustees and managers, to be appointed by the Board, with whom

2. *G.O.* 1975 (A), *Judicial,* dated 23—10—1874.

3. *Ibid.*

4. *G O.* 639, *Judicial,* dated 4—4—1876.

5. *G.O.* 33-34, *Judicial,* dated 10—1—1879.

subject to an appeal to a Civil Court, rested also the power of removing such trustees and managers from office. The Bill was, in fact, the adoption of the law of England as applied to the charitable trust. The Governor of Madras, the Duke of Buckingham and Chandos did not approve of the centralisation of the authority in the Board of Commissioners. He (the Governor) observed, "While we are endeavouring to strengthen and establish local self government, we should encourage and foster local management of these essentially local matters and trustees should be made to recognise the responsibility rather than be relieved of it; and to take any step likely to encourage indifference amongst local people to the responsibilities of local duties, is impolitic."[6] He approved of the official trusteeship on condition that a separate bill with a statement of reasons which led to it, was prepared. The Bill with the necessary modifications was forwarded to the Secretary of State and the Government of India for their approval. The Secretary of State in his despatch No. 127 dated 27-5-1880, approved of the Bill but stated that since the object was of general importance, it should not be passed into law before the Government of India expressed their opinion on the matter.[7] The Government of India, however, stated that though the proposed measure was framed solely in the interest and at the instance of the Indian public, it was a subject in which the action of the Government might easily be misrepresented and that therefore it was not desirable to proceed with the legislation during the next few months. In deference to the wishes of the Government of India, the Government of Madras resolved to take no further action in the matter.[8]

The next measure in the direction was the Bill drawn by D. F. Carmichael, a member of the Council.[9] The Bill differed from Robinson's Bill of 1878 in many respects. Its scope was more limited and included very large temples and excluded small

6. *G.O.* 33-34, *Judicial*, dated 10—1—1879.
7. *G.O.* 1471, *Judicial*, dated 21—6—1880.
8. *G.O.* 1681, *Judicial*, dated 15—7—1880.
9. *G.O.* 58, *Legislative*, dated 5—2—1884.

ones. It contemplated the establishment of a District Board in Madras, and the exemption from all control of religious endowments under the management of hereditary trustees. They were empowered to remove, in case of gross mismanagement the trustees or managers of the institutions, though the action was subject to an appeal to the District Court. The Bill also provided for the diversion of the surplus funds, with the approval of the District Board, to secular purposes.

As there was a difference of opinion in regard to the direction in which the legislation should proceed on this subject, the Government appointed in 1884 a new committee with Mr. Sullivan, a member of the Council as President to consider and report on the matter of the draft bills already before them.[10]

The Committee originally intended to frame a bill, sufficiently comprehensive, to cover the Hindu and Mohammedan endowments. But subsequently decided to leave out the latter endowments from its consideration. In view of the absence of wide-spread complaint regarding their mismanagement and the difference in conditions of the two sets of institutions, which rendered it impossible to arrange satisfactorily for the control by a mixed central body, composed partly of Hindus and partly of Mohammedans. The Committee submitted its report with the revised draft Bill in 1886.[11] The Bill was mainly on the lines of Mr. Robinson's Bill. It proposed the appointment of Central Committee of paid members, however the members of the first committee alone were to be appointed by the Government, "in their legislative capacity,"[12] and the subsequent vacancies to be filled by the High Court; whereas Robinson's Committee had recommended the nomination of Committee members on all occasions by the Governor-in-Council. The Bill endeavoured to secure the benefit of local involvement by the establishment of District Committees, one-third of the members were to be nomi-

10. *G.O.* 58, *Legislative*, dated 5—2—1884.

11. *G O.* 1814, *Public*, dated 17—4—1888.

12. *Ibid.*

nated by the Central Committee and two-thirds to be elected. The Central Committee had to supervise and audit the accounts of the District Committees and the latter was to supervise and administer institutions in the revenue district under them. The trustees, who were under District Committees, were actually to manage the institutions. The Committee also invited the opinions on the question of control of *maths*[13] by the Central Committee and decided that the Committees should have the power of managing the properties of the *maths*, but should not have the power of dismissing the *Matadhipaties*.[14] When the Bill was forwarded to the Government of India, they observed that it was too wide in its scope and suggested an introduction of a bill, more limited in scope and more in harmony with the policy of the Act XX of 1863.[15]

In the light of this view of the Government of India, a new committee was constituted to draft a bill which would best amend the existing law.[16]

The Committee under the presidency of Justice T. Muthuswamy Iyer and consisting of six Hindus, submitted its report with a draft Bill in 1893.[17] The main features of the Bill were the extension of the authority of local committees even to those temples, whose trustees were hereditary and the utilization of official involvment to a limited extent by investing the District Judges with certain additional duties. The hereditary and other trustees were subject to a partial control of keeping accounts and furnishing such information as was required by the Committee. The additional work assigned to the District Judge was that of compiling and

13. Math - a place which facilitates spiritual instruction and the acquisition of religious knowledge. In its narrow sense the term signifies residence of an ascetic. A *Math* some what resembles a catholic monastry.

14. Matadhipathi = Head of a math.

15. *G.O.* 543, *Public*, dated 15—4—1887.

16. *G O.* 364, *Public*, dated 4—4—1888.

17. *G O.* 15, *Legislative*, dated 9—3—1893. See also *G.O.* 54, *Legislative*, dated 26—5—1894 *Board of Revenue Consultations*, dated 13—6—1894, No. 255.

maintaining members' and voters' lists, conducting elections, nominating prescribed numbers of members to the committees, issuing of summary orders to eject the dismissed trustees, etc. The nature of the work was to be mostly judicial and jurisdiction, summary and special. But this Bill differed from the previous ones in that it abandoned the idea of a Central Board on the objection of the Government of India and it also excluded *maths*, private and very small temples and institutions of a charitable nature[18]. The Government of India objected to the Bill on the ground that it attempted to entrust functions of an executive nature to the District Judges and thus contravened the principles of the Act of 1863. They, therefore, informed the Government of Madras that "they could not under any circumstances sanction any proposal to revise the procedure or alter the principles embodied in that, in any material way." [19]

Thereupon another committee under the presidency of Mr. Chenstal Rao was constituted in 1894 and was asked to so alter the Bill on the lines indicated by the Government of India as to exclude the imposition of new responsibilities on the District Judges.[20]

The Committee submitted its report and the draft Bill in 1899.[21] The new Bill was practically the re-enactment of the Act of 1863 with certain modifications. These alterations were the inclusion of those religious institutions, the appointment of whose trustees was subject to the sanction of the Government prior to 1842, and not just those which the Government controlled at the time of the passing of the Act of 1863. The hereditary trustees were to keep regular accounts and submit them to the Committees once a year. The Committee justified the alteration on the ground that even private trusts were subject to the control under section 19 of the Indian Trusts Act. The Government of India rejected the Bill on the ground that it extended the scope of the Act of

18. *G.O.* 72–74, *Legislative,* dated 26—5—1894.
19. *G.O.* 114, *Legislative,* dated 30—10—1894.
20. *G.O.* 26, *Legislative,* dated 28—3—1895.
21. *G O.* 1065–66, *Public,* dated 23—9—1899.

1863 by including a new class of trustees, and subjected the hereditary trustees to the partial control of committees and thus departed from the principles of the Act of 1863. They further observed, "any attempt by the Government of Madras to legislate in respect of Hindu religious endowments might excite widespread suspicion of the intention among the other religious communities and in other parts of the country. Even the mass of the Hindu worshippers did dot appear to feel any appreciable grievance in the present system of the management or recognize the existence of any evil that called for remedy."[22] In view of this strong opinion on the part of Government of India, the Government of Madras did not pursue the matter any further.

Legislative measures by private agencies

Notwithstanding the failures of the various Committees, individual attempts were made from time to time to legislate and tackle this problem, not only in the Local and Imperial legislative chambers but also by those who were interested in protecting religious institutions through associations and petitions.

The Dharmarakshana Sabha was one such association. It was established and registered under the Act XXI of 1860.[23] One of the aims of the association was to protect the properties of the Hindu religious endowments. It requested about two hundred trustees and committee members in charge of religious institutions to furnish it with the list of endowments and properties belonging to the institution. Only six responded. Others did not feel obliged to keep or exhibit the inventory of the properties. The Sabha took upon itself the responsibility of getting the accounts of the institutions audited, and only five responded. The Sabha filed suits for the removal of trustees or for settling schemes with reference to five institutions. But it could not achieve its purpose because of the defects of the Act of 1863 which fortified the position of the trustees and the managers of the religious institutions *vis-a-vis* the people.

22. *G.O.* 223, *Public*, dated 2—3—1900.

23. *G.O.* 627-628, *Public*, dated 28—5—1912.

Members of the public sent petitions, memorials and addresses to the Government,[24] requesting them to check misappropriation of funds of the religious institutions.

The hereditary trustees preferred the Act of 1863 to operate and wanted as little interference as possible from outside quarters in the management of their affairs. The Temple and Mosque committees, being powerless, wanted the Act to be altered so as to enable them to carry out their work more effectively, while the people, who quoted cases of misappropriation and mismanagement of funds, wanted the Government to step in and set the matters right.

Measures in the Governor-General's Legislative Council

In the Imperial Legislature, a few bills were introduced by private members. Rao Bahadur Anant Charlu, a member of the Imperial Legislative Council, introduced his short bill in the Legislature in 1897.[25] The object of the Bill was to remove certain defects in the management of religious and charitable endowments of all non-Christian religions. It provided for the administrative machinery of Central Committee and District Committees for each religion to be elected by the members of that religion. The latter was to exercise general supervision over the

24. Vide *G.O.* 86-87, *Legislative*, dated 3— 7—1894.
„ 216-17, *Public*, dated 21— 2—1899.
„ 397, „ 9— 4—1900.
„ 658, „ 6— 9—1906.
„ 137-38, „ 15— 2—1907.
„ 704, „ 2— 9—1907.
„ 912, „ 19—11—1909.
„ 529, „ 24— 5—1911.
„ 739, „ 7— 7—1911.
„ 63, „ 6— 1—1911.
„ 627, „ 28— 5—1912.
„ 299, „ 10— 3 1914.
„ 317, „ 14— 3—1914.
„ 318, „ 14— 3—1914.
„ 335, „ 17— 3—1914.
„ 369, „ 24— 3—1914.

25. *G.O.* 183-184, *Public*, dated 13—2—1899.

religious institutions and the former to act as an appellate tribunal to correct the mistakes of the latter. The Bill was referred to the Government of Madras who observed that the scope of the Bill, which included all the non-Christian endowments, was too wide to be effective. The Government concluded that, "any law which would apply uniformly throughout India even to Hindu institutions with their vast diversity of conditions and requirements is—an impossible task.—Besides, in order to ensure the fullest expression of opinion of those who are most affected by the measure—it is necessary that the legislation should take place at Madras and not at Calcutta.—Hon'ble Anant Charlu's Bill should not be permitted to become law."[26] The bill too met with the same fate as the earlier ones.

Rash Behari Ghose's Bill in the Imperial Legislative Council and Rahmootullah's Bill in the Bombay Legislative Council referred to charitable trusts only.

In the Local Legislative Council of Madras also, a few individual efforts were made. The Hon'ble Kalyanasundaram Iyyer introduced a bill in 1896[27] whose object was to remove the following defects:

1. Life membership of the committee members.
2. absence of a provision for the revision of voters' list.
3. Committee's inability to deal effectively with negligent trustees.
4. lack of finance for the establishment of the committees.
5. absence of a provision for the scrutiny and publication of accounts of the committees and temples.

He withdrew his bill on learning that the Government had the matter under consideration,[28] since that time Mr. Chenstel Rao's bill was being drafted.

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26. *G.O.* 184, *Public*, dated 13—2—1899.

27. *Ibid*

28. *Copy of the Bill and the Legislative Council proceedings* dated 26—2—1896 and 9—4—1897.

In 1902, Mr. Srinivasa Rao proposed to introduce a bill in the Madras Legislative Council.[29] It aimed at removing only two defects of the Act of 1863, viz.,

1. life membership of the committee members.
2. absence of a provision for scrutiny and publication of accounts.

Though the Government of Madras supported the Bill, the Government of India did not accord their sanction for its introduction.[30] Lord Curzon did not want the Government to interfere or to take up the management of religious institutions even when it was necessary. He was also of the opinion that the elections to the Temple Committee "may not result in any good—(because) election to the Municipal Corporation did not."[31]

In 1912, at the instance of Dharmarakshana Sabha, Messrs. T. V. Seshagiri Rao and L. A. Govindaragava Iyer sought to introduce in the Madras Legislative Council another bill which was intended to meet the defects of the Act without opposing its spirit. It aimed at removing the provisions of the life membership of the committee members and providing for the revision of rules, auditing of accounts, maintaining the required strength of the Committee, financing of the suits by the committee, etc. While forwarding the Bill to the Government of India, the Government of Madras informed them that "there was the consensus of opinion in the State that the Act XX of 1863 required amendment—and any refusal to allow the legislation to proceed would arouse much resentment."[32]

Thereupon a conference of officials and non-officials was convened by the Government of India in 1912 to discuss the question of the administration of religious and charitable endow-

29. *Copy of the Bill and Legislative Council proceedings* dated 26—2—1896 and 9—4—1897.

30. *G.O.* 14, *Legislative*, dated 12—3—1903.

31. *Protection of Religious Endowments*, vide *Curzon Collections*, MSS Eur F. 111, p. 282, (India Office Library, London).

32. *G.O.* 627-28, *Legislative* dated 28—5—1912.

ments.[33] It was finally decided, in consultation with the Secretary of State, that an imperial legislation dealing with certain points which might appropriately be provided for in all provinces should be undertaken and that pending the enactment of such a law, local legislation should be held in abeyance.[34] The Imperial Legislative Council finally enacted the Religious and Charitable Trusts Act in 1920.[35(a) & (b)]

Even this Central Act was found to be extremely limited in its scope and ineffective in checking maladministration of trusts. At the same time the Reforms of 1919 were also introduced and the religious endowments became a transferred subject to be administered by the elected members of the Government, with the Raja of Panagal in charge of it. He appointed a committee to draft a bill, with the Raja of Ramnad as its President.[36]

The Committee submitted a comprehensive bill recommending the repeal of the Act of 1863 on the ground that it had too many defects to be amended.[37] The Government accepted the bill with

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33. *G.O.* 221-A, *Public*, dated 21—2—1914.

34. *G.O.* 1982, *L. & M.*, dated 18—10—1922,

35. (*a*) Donald Eugene Smith, *India as a Secular State*, Princeton, 1963, p. 78;

(*b*) *The Religious and Charitable Trusts Act of 1920*: *A short note*:

The Act aimed at providing some special remedies in the matter of administration of religious and charitable trusts. It extended to the whole of India and was applicable to trusts created for public purpose and those belonging to every community. Thus it made no distinction between caste, creed and authors of those trusts. It did not establish a machinery of control as such, but secured such control through judicial process. Under this Act any person having an interest in the trust could apply to a court for direction to the trustee to furnish particulars as to the nature and objects of the trust, its value, conditions of management and application of its income, etc. The court was expected to examine the validity of the application and if found valid, was to direct the trustee to furnish the information. If the trustee failed, he could be prosecuted under Section 92 of the Civil Procedure Code of 1908.

Vide, *The Civil Court Manual* (*Central Acts*), Madras 1959, p. 594–601.

36. *G.O.* 2317, *L. & M*, dated 25—11—1921.

37. *G.O.* 1982, *L. & M.*, dated 18—10—1922.

certain modifications. The Committee was of opinion that it was not the opportune moment to undertake legislation in respect of the Mohamedan endowments. They, therefore, restricted the scope of the bill to Hindu endowments, leaving the Muslim endowments to be governed by the Act of 1863. The Bill was finally passed as Act I of 1925.

Review of measures

Of the twelve legislative measures, attempted between 1863 and 1927 to remedy the defects of the Act of 1863, nine originated in Madras Legislative Council, two in the Imperial Legislature at Calcutta and one in Bombay. Though funds of religious endowments were misappropriated all over India, more efforts were made to ensure their better management in Madras than anywhere else.

Out of these twelve legislative measures, nine measures which originated in Madras, related exclusively to religious endowments, and the remaining three which originated outside Madras, related either to both religious and charitable endowments or to only the charitable endowments. Anant Charlu's Bill in the Imperial Legislature related to both religious and charitable endowments and the bills of Mr. Rash Behari Ghose at Calcutta and Mr. Rahmattullah at Bombay related to charitable endowments only. The charitable endowments which were managed by the Board of Revenue, were better managed than religious endowments which were managed by the Act of 1863.

There was a definite trend towards local legislation on the subject rather than central legislation. It was considered necessary to legislate on a local basis because the customs, and conditions differed from place to place. While commenting on Mr. Anant Charlu's bill, this view was also expressed by the Government of Madras.[38] It was also believed that any law which applied uniformly to both endowments was impracticable. This view holds good till today, when one finds state laws relating to religious endowment and not a central law. Efforts were made in the early 1960s by the Union Government to explore a possibility for

38. *G.O.* 184, *Public*, dated 13—2—1899.

framing a uniform legislation in respect of religious endowments in India and therefore in 1962 the Hindu Religious Endowments Commission was constituted for the purpose. In its report it recommended a uniform legislation in respect of religious endowments of all communities in India. It is doubtful whether the states which are involved, in some manner or other, in the administration of religious endowments will give up their own legislation and opt for a Union legislation.[39]

Another view gaining ground was that both the Hindu and Muslim endowments could not be managed by one mixed Board of Hindu and Muslim members and that these should be managed by two different agencies. This idea originated from the Act of 1863 itself. Though it applied equally to both Hindu and Muslim endowments, there was no single board at the apex and besides there were distinct Mosque committees to manage Muslim endowments. Sullivan's Committee in 1887 too held the view that the two kinds of endowments could not be managed by the same board. This idea prevailed upon the minds of the law markers of 1922, who finally decided to let the Muslim endowments be administered by the Act of 1863 and frame a legislation relating solely to the Hindu endowments.

On the subject of the control of the properties of the *maths* only two measures, that of Robinson's in 1878 and Sullivan's in 1887 recommended its control. No other bill recommended it. Yet this idea too prevailed upon the minds of the framers of the 1922 Bill, and thus a clause to the effect was inserted in the Act I of 1925.

Both Robinson's Committee (1878) and later Sullivan's Committee (1887) advocated the idea of creating a central Board of Commissioners for the control of the trusts. Justice Muthuswamy appreciated the idea but abandoned it on account of the opposition of the Government of India. However, the initiation of the proposal and existence of the Board of Charity Commissioners in

39. *Report of the Hindu Religious Endowments Commission,* Ministry of Law, New Delhi, 1962, p. 172–173.

England established a trend towards centralization in this sphere. The Board of Commissioners was constituted by the Act I of 1925 which in its turn paved the way for the departmental control of religious trust in 1951.

After the Reforms of 1919, the Ministry in charge of the Hindu religious endowments appointed a committee presided over by the Raja of Ramanad for the purpose of considering and reporting on a bill which had been drafted for amending the Act XX of 1863.[40]

The important feature of this bill was that it departed from the principle of the neutrality of the Government, which had hitherto been maintained by the Act XX of 1863, in order to ensure efficient administration of the endowments in Madras Presidency. The move was justified by the Government of the day on the ground that the religious endowments were now a transferred subject in charge of the popular Ministry responsible to the local legislature.[41]

The Bill applied to the Hindu religious endowments in the Presidency of Madras, with a proviso to enable it to be extended to Jain endowments, should the need arise. At the instance of the late Sir Mohammad Habib-ul-lah, the Muslim endowments were excluded from the scope of the bill. One of the notes on the subject states, "Sir Mohammad Habib-ul-lah thinks that the present is not an opportune moment for undertaking legislation in regard to Mohammedan religious endowments and that after this Act has been worked for some years, Mohammedans will apply for similar legislation. The Bill has therefore been altered accordingly."[42] The Bill also excluded the minor village religious institutions whose annual income was less than Rs. 250/-. It accorded special privileges to hereditary trustees in matters such as succession, liability to inspection, removal from office, etc., and the ancient Jamindars were deliberately included within the scope of the bill as they were the managers of institutions, endowed

40. *G.O.* 2317, *L. & M.* dated 25—11—1921.

41. *Notes to letter* 1982, *L. & M.* dated 18—10—1922.

42. *Ibid.*

with large properties "dedicated for public purpose and as complaints of mismanagement have in the case of several of them been pronounced."[43]

A trend which was prominent throughout this period was the interest of the Government in the problem of effective management of the religious trusts and the preference of the people for the Government to take action in the sphere. Out of the nine legislative measures which originated in Madras, six were at the instance of the Government of Madras and only three were private efforts, of which the only popularly organised effort was that of the Dharmarakshana Sabha's. There were a number of petitions, appeals and addresses from the local people. But these petitions sought to have the Government tackle the problem of abuse within the endowment structure and manage the religious trusts. The people appeared to have preferred governmental action to that of private action. The trend enabled the Government not only to take interest in the tackling of the problem but also gradually assume greater and greater responsibilities for controlling and managing these religious trusts. The trend was crystalized in the Act I of 1925[44] and later, to a greater extent, in the Act of 1951.

Preliminaries to the Act of 1927

The various attempts of the 19th and early 20th century at legislation to regulate the management of religions endowments, while meeting only with limited success at the time of their proposal, were not abandoned on that account. As soon as the 'responsible' Government was formed in 1921, they decided to frame a comprehensive legislation relating to religious endowments. The first consolidated legislation was the Act I of 1925 which was re-enacted later as Act II of 1927. The origin of the Madras Act II of 1927 was in the Bill 12 of 1922 which was passed by the Madras Legislative Council in 1923 and was sent to the Governor

43. *Notes to letter* 1982, *L. & M.* dated 18—10—1922.

44. Under this Act, a central board for the supervision and control of the Hindu religions endowments was establisled at Madras.

for his assent. However, the Governor sent it back to the Legislature for reconsideration and it was finally enacted two years later as Madras Act I of 1925. The Act was hardly implemented when some of its provisions were challenged in the Court. It was decided to re-enact it and was therefore introduced as Bill 5 of 1926 in the Legislative Council with a validating clause for the action taken under it. It was this Bill which was finally enacted as Madras Act II of 1927.

The Bill of 1922

The Bill provided for essentially the same type of machinery as the Act XX of 1863 did, but invested it with more powers. Thus it provided for a regularly constituted committee to supervise and control the management of religious endowments. The members of these committees were to be partly elected and partly nominated by the Local[45] Government. The Local Government was also given the power to vary the constitution and the jurisdiction of the committees and even to abolish them. The term of office was reduced to five years. Besides supervising and controlling, the committees had to maintain a proper register of endowments committed to them, prepare and maintain a record of their origin and history, inspect the moveable and immovable properties of the religious institutions, and settle *dittams*. They had to direct the religious institutions whose income was more than Rs. 3,000/- a year, and have their accounts audited once a year by auditors certified by the Local Government. The committees had also to determine from time to time the number, grades, designations, and scales of pay of its servants. There was a specific provision for the levy of contributions from the religious endowments for meeting the expenses of the committees. The Local Government was given the power to make rules, enabling the committees to intervene even in the internal administration of the temples. In order to put an end to frivolous litigation, the Ramnad Committee made the decisions of–

45. Local Government was the term used for Governments of the units (provinces) in India till about 1935.

Dittam: Standard Scale of expenditure.

the Committees and the Local Government, the Collector and the Court, final on many matters. Those temples and religious institutions which attracted large crowds were obliged to pay out of the endowments, funds to the local authorities for making sanitary arrangements. Specific provision was also made for the diversion of surplus funds of religious endowments for purposes of public utility, other than those for which they were originally intended. The power to order such diversions was vested in the Court and the principles to be observed in ordering such diversions were to be those which the Courts ordinarily followed in applying the *cy pres* doctrine. Schemes relating to religious institutions were hitherto settled by Courts under the provisions of Section 92 of Civil Procedure Code and this was found to be unsatisfactory in practice. An enabling clause was inserted in the Bill by which a committee or a person whose rights as trustee were affected, could apply for abrogation or modification of the schemes and for application of the Bill to these endowments. The Bill also aimed at safeguarding the long established customs and usages of temples, and preventing the Government (executive) from interfering with the Hindu religious endowments except in a manner approved by law.

Select Committee Report

At the Select Committee stage drastic changes were introduced which altered the character and tone of the Bill considerably. One such change related to the machinery of control and supervision. The Select Committee rejected the idea of constituting the local committees all over again, since in their view these "suffered from want of guidance, control and coordination,"[46] and all too often proved inadequate to their task. It, instead, recommended the constitution of a Central Board or Boards on the lines of the Charity Commission in England. The Board was to control the committees and hear appeals from their (Committees) decisions. It was invested with the power of general superintendence over all religious institutions and was authorised to deal directly with the *maths* and excepted temples

46. *Fort St. George Gazette*, dated 6th March, 1923, Part IV, pp. 69–73.

which were exempted from the control of the committees. The Select Committee strongly supported the inclusion of the *maths* on the ground that "Math as an institution exists for the spiritual welfare of the disciples and matadhipati is an ascetic and could as such have no interest other than those which are proper and subserve the interest of his disciples."[47] It was also argued that since there were instances of mismanagement, the *maths* also ought to be controlled. However, the Committee conceded that special treatment be accorded to these venerated institutions, they were not to be subjected to the jurisdiction of the local committes and the *matadhipathi* was expected only to keep proper accounts and to have them audited.

A new category of institutions called "excepted temples" was proposed in the Select Committee in place of temples with hereditary trustees. These included the temples belonging to and endowed by wealthy land-holders. Since these people took strong exception to control by the Local Committees and their alienation of sympathies could adversely affect the interest of the institution, it was recommended that they should be excluded from the committee's control.

The original Bill had provided for the trustees to get their accounts audited by certified auditors. It was now argued that when auditors were dependant for payment on those whose accounts they audited, thorough objectivity was not to be expected of them. The Select Committee therefore recommended audit by an independent agency, appointed and controlled directly by the Government, which was to recover the costs of audit out of the funds realized by the Board and Committees in the shape of contributions. The original Bill had aimed at levying a contribution not exceeding three percent of the gross income of the religious institutions for meeting the expenses of the committees. The Select Committee instead recommended that the Board be entitled to levy a maximum contribution of one and a half percent on the income of all the institutions including the *maths* and excepted temples. The Committees were allowed a similar

47. *Fort St. George Gazette* dated 6th March 1923, Part IV, pp. 59-73.

percentage of contribution for their own purpose from the income of non-excepted temples. The total burden therefore amounted to the same as the original bill had provided.

Out of the twenty seven members of the Select Committee, six members submitted minutes of dissent. Much of the criticism in these minutes of dissent was directed against the clause relating to the creation of the Central Board. The several objections put forward against this body were: (1) the measure was far too drastic. (2) it was precipitate, since it had not been subjected to public scrutiny long enough to elicit correct and representative opinion; (3) the machinery would be very costly; (4) the estimate of three lakhs of the income[48] of the Board and the temple committees from various religious institutions was based on no proper data; (5) the exact scope and nature of the functions of the Board were not carefully delineated; (6) though it was understood to be an administrative body, it was given vast judicial powers, and the Board's decision in many cases was made final, thus depriving the people of their right to appeal to the Court, (7) Ideally, the machinery of control should grow steadily and gradually rather than be imposed summarily. The late Mr. M. Ramachandra Rao, a member of the Select Committee, in his minutes of Dissent observed, "the inevitable tendencies of all central authorities like the Board of Commissioners is to develop their own control at the expense of and to the detriment of local control and in a matter such as this, it is far more important that efficient local control should be developed rather than control should be exercised by a body of commissioners

48. Difficulties which the machinery of control faced, fully justified the following objection. "It has been suggested that the aggregate income of all the temples and the maths is about a crore of rupees and that a levy of three percent on that income is likely to yield three lakhs of rupees. There is nothing reliable in support of this estimate. Unless there is a more accurate information on the subject, it is not desirable to set up a costly machinery and then look about to find the funds."

Minutes of Dissent to the Select Committee Report by M. Ramachandra Rao vide *Fort St. George Gazette*, Madras dated 6th March 1923, pp. 59–73.

from Madras."[49] He recommended that instead the District Courts be entrusted with the responsibility of coordinating and guiding the District Committees.

The Bill was introduced twice as Bill 12 of 1922 and Bill 5 of 1926, in the two successive Legislative Councils of Madras. The former became the Act I of 1925 and the latter the Act II of 1927. When the original Bill (12 of 1922) was introduced in the Madras Legislative Council on the 18th December, 1922,[50] it was welcomed by all. It was generally agreed that the misappropriation of the funds of the religious institutions ought to be prevented and checked and the Bill was therefore deemed necessary and long overdue. All the same, differences arose regarding the institution of supervision and control to be created and the degree of control to be exercised by this body. The recommendations of the Select Committee and the Bill 5 of 1926 were, therefore, criticised sharply by the Opposition in the two Legislative Councils.

Debate in Madras Legislative Council 1922—1923

Several features and clauses of the Bill were hotly debated. About 1200 amendments were introduced in the Loeal Legislative Council on the two bills. One important amendment which was moved by the late Mr. L. A. Govindaraghava Iyyer, provided for the election of all members to the Temple Committees and opposed the presence of nominated members in their composition. This was accepted.[51] All those amendments which tried to introduce drastic changes in the Act were rejected. While those minor amendments which merely dotted the i's and crossed the t's were accepted. The exclusion of the Mohammedan religious endowments was criticised. When a question was raised whether the exclusion was based on the mistaken notion that the Mohammedan religious endowments

49. *Fort St. George Gazette*, Madras, dated 6th March 1923, Part IV, pp. 59-73.

50. *Proceedings of the Madras Legislative Council*, dated 18th December 1922, vol. 10, pp. 905-49 and 969-1008.

51. *Proceedings of the Madras Legislative Council*, dated 28th March 1923, vol. 14, pp. 3011-13.

were better managed than the Hindu ones, the Raja of Panagal replied, "I have no doubt that Hon'ble Member will readily agree that the Khilafat question still disturbing the minds of the Islamic communities, the time is not quite suitable for undertaking legislation in regard to Mohammedan religious endowments."[52]

The sections dealing with the Board of Commissioners were discussed at length. A section of the Council justified the creation of the Board as coordinating authority in light of the inadequacy of the former committees. But another section of the Council held that the Board as envisaged in the Bill was unnecessary, costly and was doomed to failure. They said that the Local Government's powers of appointment and removal of commissioners and of fixing their pay were bound to destroy the independent status of the Board and finally to make it a mere creature of the Local Government. They also criticised the enormous powers given to the Board. It was to be not only an administrative body but also judicial, with authority to decide whether a temple was public or not and whether it should be managed by the Board or not. Against some decisions of the Board, no right of appeal was to be given to the people. The Board was also to be given powers of a religious nature such as that of settling the *Dittam* which amounted to interference in internal religious matters which was not the aim of the Bill. It was also believed that the Bill was trying to establish trends towards the centralization at the cost of local-self, de-centralized Government. Commenting on the Bill, the late Mr. S. Satyamurthi, a member of the Opposition in the Madras Legislative Council said, "the complaint in this country is against over Government and against the initiative of the people and their capacity for local self-government being impaired. In this Bill, even with regard to the most sacred right, we are asked to rely upon and look to the Government. The result will be, Mr. President, that just as the blighting hand of over-Government has set

52. *Proceedings of the Madras Legislative Council* dated 19th December 1922, vol. 10, p. 1006.

upon our administration, the blighting hand of this Government will also fall tight on our temples and maths, with the result that they will also become part of the great machinery which the Hon'ble Minister and his colleagues are blackening every day."[53] The general impression of the Opposition was that the mismanagement of the temples and the *maths* could never be cured by a bureaucratic apparatus but only "by rousing the local Hindu conscience, by forming local committees with regard to temples and by forming committees of disciples with regard to maths...........with the minimum provision with regard to the budget being presented and the accounts being audited by certified auditor, if need be by Government,.........to go beyond that, is unnecessary."[54] To this criticism the late Raja of Panagal replied that the machinery of the Board was absolutely necessary to check the mismanagement and misappropriation of funds of the religious institutions.

A few amendments were introduced to exclude *maths* from the jurisdiction of the Board. It was agreed that since the *maths* were for the spiritual welfare of the disciples and since the *matadhipati* was a very highly respected personality, they ought not to be subjected to the control of the Board of Commissioners. The clause was defended on the ground that it aimed at controlling only the properties of the *math* and not the person of *matadhipathi*, and that it affected only the secular administration of the properties of the religious institution.

An attempt to exclude the application of the *cy pres* doctrine to the surplus funds of the religious institutions met with little success. It was argued that the *cy pres* doctrine could be applied to the surplus funds of charitable institutions but never to the surplus funds of the religious institutions; and that the funds for general purposes must be obtained from general revenues and the funds of the religious institution ought never to be diverted. To this the supporters of the *cy pres* application argued that the appli-

53. *Proceedings of the Madras Legislative Council*, dated 17th September 1926, vol. 32, pp. 910 and 917.

54. *Ibid.*, p. 918.

cation of the doctrine was not a violation of the 'will of the endower'. Where the endowment was not made with any specific object except the object of the endower getting salvation or relief from ailments, the application of the doctrine in that case was quite proper. The Raja of Panagal opined, "that being the case, there was no question of diversion at all in the case of these endowments. The funds are to be administered by the trustees of the temples."[55]

As soon as the Bill 12 of 1922 was passed in 1923[56] and sent to the Governor of Madras for his assent, a number of protests, representations and memorials were addressed to the Governor, in some cases requesting him to withhold his assent and in others entreating him to give his assent. Those who supported the Bill appreciated the Government's decision to give up the policy of neutrality in the matter of the control of funds of religious institutions. They congratulated the Government for assuming the benevolent role of the Hindu Kings of old who endowed and protected the properties of the religious trusts. A series of meetings and resolutions to protest against the Bill emanated from Udipi in 1923, another series emanated from the *Sammelan* (meeting) held by the Swami of Kamakotipeeta at Jambukeswaran, also in 1923. The main objections to the Bill at the several meetings were that: "(1) the Bill violates the principle of religious neutrality of the Government, (2) the *maths* are not endowments, and the *matadhipaties* are not trustees and that these should be subjected to no higher Government control than what already exists in ordinary law and usage, (3) the temples. in respect of which schemes framed by the Courts are enforced, should on no account be subjected to the provisions of the Bill, (4) there is no justification for setting up the machinery of the Board of paid Commissioners, as the ordinary Civil Court in whom the public have confidence will serve the purpose, (5) the diversion of surplus funds towards

55. *Proceedings of the Madras Legislative Council,* dated 19th September 1926, Vol. 32, p. 951.

56. *Ibid.*, dated 3rd April 1923, vol. 14, p. 3220.

secular objects such as education and other charitable objects, is objectionable."[57]

The Scrutiny by the Governor

The Governor of Madras while examining the bill, expressed his objections to some of the provisions of the bill and returned it to the Legislative Council under section 81-A of Government of India Act of 1919 with a request for the reconsideration of those clauses.[58] The Governor made several suggestions. He argued that the clause conferring on the Madras City Civil Court a jurisdiction in matters in which the High Court in the exercise of its ordinary original jurisdiction was competent to take cognizance of, amounted to affecting the jurisdiction of the High Court and that the Local Legislature was not competent to legislate in such matters. He recommend that the ordinary original civil jurisdiction of the High Court be, therefore, excluded from the Bill. Secondly, the Board being a corporate body of considerable authority, it was essential that judicial proceedings inside Madras city should not commence in any Court lower than the District Court. Thirdly, that the powers of general superintendence conferred on the Board under Clause 14 and on the Committee under clause 31 and the powers of fixing and altering *Dittams* under Clause 51 should be subject to the provisions of any scheme framed or deemed to have been framed under the Act. And finally the Committees' powers under Clause 51, might in some cases affect indirectly the rights and the customs to which the Committees might attach great importance. It was therefore deemed desirable that a provision should be inserted under which the aggrieved trustee or person having an interest, could institute a suit for modifying or setting aside an order of the Committee under sub-clause (3) of the Clause 51. Fifthly, the settlement, alterations and cancellation of the scheme of administration should substantially be the same both for non-excepted temples and excepted temples and *maths*. The Board could initially settle the scheme in both cases but there should be provision for a regular suit

57. *G.O.* 2803, *L. & M.*, dated 17—10—1923.

58. *G.O.* 3354, *L. & M.*, dated 20—11—1924.

in the Civil Court to set aside or to modify the scheme settled by the Board, and that there should not be bar to this right of appeal to the higher Courts against decrees on such suits. Fifthly the procedure for applying the *cy pres* doctrine under Clause 63 should be the same as the one followed for settling the scheme and a right to institute suits to modify or cancel the order of the Board ought to be allowed. The Governor was anxious that the clauses which tried to abridge the fundamental rights of the people to appeal to the Court against the arbitrary action of the Board ought to be eliminated and civil liberties restored.

Assent by the Governor-General

The Bill as amended in the light of the suggestions made by the Governor was introduced in the next Council, and passed into law as Act I of 1925. It was later reserved for the assent of the Governor-General as per Section 81 (3) of the Government of India Act of 1919. When the Bill was sent to the Governor-General for his assent, a number of memorials and petitions were addressed to him, requesting him to withhold his assent. Besides the arguments against the Bill which have been cited earlier, the memorialists stated that a number of amendments were informally introduced in the Provincial Legislature which required the previous sanction of the Governor-General as per Section 81-A(3) of the Government of India Act, 1919.

In justification of his assent to the Bill, the Governor-General stated[59] that the sub-section to 81-A(3) enabled the defect to be cured by the giving of the assent, and since the provisions were of such nature that assent could not be withheld it had perforce to be given. The Governor-General also stated that the Bill contained no provision vitally objectionable on principle such as to merit a veto. He however pointed out that the clause which laid down the procedure for the modification of the schemes already settled, was not very satisfactory. However, since the minor defects could always be rectified by amending legislation, he was unable to refuse

59. *G.O.* 346, *L. & M.*, dated 30—1—1925.

his assent. After the Governor-General[60] and the Secretary of State for India[61] had given their assents, the Madras Act I of 1925 was immediately put into force. Important actions taken under it were, the appointment of Commissioners, framing of rules and levying of taxes under the Act on the institutions concerned.

A Critique

Act I of 1925 was an important milestone in the history of the Hindu religious endowments. It was the first law relating purely to Hindu religious endowments, enacted by the Legislature. It was, however, not the first law in the field, its predecessors being the Regulation VII of 1817 and the Act XX of 1863. Like the Regulation VII of 1817, it centralised all the powers of supervision and control in a centrally constituted Board and like the latter it established the local committees to supervise the religious institutions under their jurisdiction.

The Act included within its scope the *maths* for the first time. The inclusion was justified on the ground that the properties and not the person of *matadhipati* were to be controlled. That it is difficult to distinguish the two aspects of the same problem has been proved by an increase in litigation over this question.

During the debate on the Act, all members, irrespective of their religions or creed were expected to participate in the discussion and the idea of excluding any non-Hindu member was never entertained. Yet when Mr. M. Ratnaswamy, a member of the Madras Legislative Council in 1922 and a Roman Catholic, was asked how he was interested in the *Hindu*[62] Religious Endowments Bill, he at once protested against the inorganic and unparliamentary view of the constitution of the Council.[63] He further

60. *G.O.* 29, *Law (Legislative)*, dated 27—1—1925; see also *G.O.* 346, *L. & M.* dated 30—1—1925.

61. *G.O.* 168, *Law (Legislative)*, dated 24—4—1925.

62. Emphasis added.

63. *Proceedings of the Madras Legislative Council*, dated 18th December 1922, vol. 10, pp. 944-945.

argued, "if the objections of my Hon'ble friend were to be pressed to its logical conclusion, then very few of us would have a right to interfere in most of the debates—. As a member of this Council, I have a right to speak upon all questions brought before it. It is the fault of those that allow these questions to be brought before this Council, if I speak upon a question like this.[64] Thus the Legislature though elected on separate electorate, was not expected to divide itself into divisions while legislating. It was to be treated as an organic whole and legislate as one house.

However, the same idea did not seem to operate on all occasions. When problems touching the religious, social and cultural interests of the majority community (Hindus) who also dominated the legislature, came up to be tackled by it (legislature), the majority group understood itself to be the whole legislature and legislated; whereas when similar problems of a minority group came up, the legislature was no longer an organic whole, but the members considered themselves as to be Hindus, Muslims or Christians. Thus, when the Muslim endowments were excluded from the scope of the Act, there was not only no opposition to the idea but also, perhaps, was accepted as quite normal. That the 'Hindu legislators' hesitated to legislate on problems of similar nature but touching the Muslim or minority interest, was not far from truth. Was the House, on such occasion infact, an organic whole?

The exclusion of the Muslim endowments is inexplicable on other score. If the principle of the Act was to protect the properties of the Hindu religious institutions, then such a protection ought to have been extended to the Muslim endowments also. Two explanations were given to justify the exclusion. It was stated that there was no large scale exploitation of the funds of the Muslim endowments. That this view is incorrect is proved by the findings of the commission which surveyed the conditions of the Muslim endowments in the State of Madras in 1958. The report says that most of the older endowments were either alienated or

64. *Proceedings of the Madras Legislative Council,* dated 18th December 1922, vol. 10, pp. 944–945.

came to be treated as private property by the *Mutawallis*, the managers of the *wakfs*.[65] Secondly, it was explained that Muslims could ask for such protection of the properties of their religious endowments if they wanted, the initiative being left to them. Perhaps, conditions of the times necessitated the exclusion of the Muslim endowments from legislation on the ground that legislature dominated by the Hindus could not dabble in the problems relating to social, or religious interest of the minorities. Whatever be the reason, political expediency doubtless triumphed over principle.

Such a move resulted in two legislations—the Hindu Religious Endowments Act and later, the Muslim Wakf Act - touching the same problem of protection of the funds of the religious trusts.

65. *Report of the Commissioner of Wakf No. 132/58, Home Department,* dated 31—1—1958.

CHAPTER IV

THE ACT OF 1927

The Act I of 1925 had hardly operated for a few months, when doubts were raised about the validity of the enactment. It was questioned whether the Governor of Madras was competent to remit the Bill to a Council, other than the one that had initially passed it. It was challenged in the Madras High Court in several suits by leading *Matadhipaties* and managers of temples.

Most of the lawyers too expressed their doubts about the validity of the Act, prominent among them being the late Sir Tej Bahadur Sapru of the High Court of Judicature at Allahabad.

While the suits were still pending in the Madras High Court, other suits questioning the validity of the Act were instituted in the mofussil courts. The Government of Madras decided not only to avoid the risk of taking an adverse decision but also long delay and the consequent expenses to all the parties in the suits. Besides it was believed that it was not worth enduring such inconvenience for the sake of an objection which was purely technical and relating to procedure. The Government of Madras thereupon applied to the Central Government for permission to introduce a bill validating the provisions of the Madras Act I of 1925.

Under the law of the Government of India a validating Act could be passed only by the Governor-General's Legislature, and the local Legislative Council was not competent to validate its own statute. In order to circumvent this difficulty they suggested that a new measure in the nature of a re-enacting bill could be introduced in the Council which had the power to do so. Thereupon a bill repealing the Madras Act I of 1925 and re-enacting its provisions in another code with a clause validating all the acts done under the Act I of 1925 was introduced in the Council in 1926.[1]

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1. *Proceedings of the Madras Legislative Council*, dated 25—8—1926, vol. 31, pp. 42-94.

It was in this Council that the Bill 5 of 1926 was hotly debated. There were 47ɔ amendments brought to 85 clauses of the Bill and its three schedules and the preamble. However, none of the important amendments were accepted and the Bill was passed on the 17th September 1926 as the Madras Hindu Religious Endowments Act of 1927 or Madras Act II of 1927.

Provisions of the Act of 1927

The purpose of the Act II of 1927 was twofold. It aimed at providing for the better administration and governance of certain Hindu religious endowments. and secondly to remove any doubts as to the legality of action taken and things done under the Act I of 1925.

The Act II applied to the entire presidency of Madras with certain limitations. It was made applicable to the Hindu religious public institutions within the presidency limits except the presidency town of Madras (Clause (2) (1)). The Local Government under Clause 3 (a) had the power, in consultation with the Board to exempt any religious endowment from the scope of the Act. It also could, under the Clause 3 (b), extend the provisions of the Act to the Jain institutions. It was explained that since the Jains did not materially differ from the Hindus, the Act could be extended to the Jain institutions. The Act applied to public endowments and not to private endowments. In the former, the endowment is made for the use or benefit of the public and in the latter it is for the benefit of a family or an individual. Further, the Act applied only to religious, not charitable endowments, though generally such a distinction is not made under the Hindu Law. In the stages this arbitrary distinction created confusion.

The Hindu religious system being comprehensive in its character and comprising just not one particular form of faith but a virtual community of faiths, it embraces an array of beliefs and practices from the most basic form of idolatory to the loftiest level of philosophical monism. Under the Hindu practices several customs and usages claim to be both religious and charitable. In order to distinguish between these two, the aid of the Hindu Law is fisrt

taken and where it fails, the judicial decisions clarify the issues. Under the Hindu Law an idol as a symbol of a certain religious purpose, is capable of being endowed with property and that endowment is valid religious endowment. Sometimes an endowment is made to a deity though for a charitable purpose and such an endowment may be mistaken for a religious endowment. Judicial decisions have laid down that such an endowment is a charitable, not a religious one. A religious endowment was regarded as made to a Deity to perpetuate its worship.[2] The Act applies to such religious endowments.

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2. In Venkatachala—Vs. Taluq Board, Saidapet, it was explained:

"One Kanagammal executed a will by which she constituted three properties, a *Chatram* and two houses as endowments for certain charities viz., 1. to feed 12 Brahmins on Dwadesi day in the *Chatram* building, 2. to perform *archana* to the Goddess in a temple, 3. to supply *neer moru* (butter milk) etc., to persons attending the *Molugadi* service at Tiruvottiyur, and appointed the first defendant and two others as trustees to carry out the charities. For some time, the first defendant managed the properties. Subsequently he mismanaged the property and was also convicted of an offence. On his alienating the endowments to the defendants 2 and 3 the Board of Revenue interfered, and, on enquiry, passed an order vesting the properties in the Taluk Board, Saidapet. On the strength of that order, the Taluk Board sued to recover from Defendants 2 and 3 the charity properties in their possession. In the course of the judgement, their Lordships Sir Ralph Benson and Justice Sunderam Ayyer said: "The main question argued at the hearing was whether the Revenue Board's order making over the management of choultry to the plaintiff was legal and valid. Mr. Venkataram Sastriar contended that the trust must be regarded mainly as a religious one, and that the Board had, therefore, no jurisdiction over it. He argued that distribution of *neeru moru* etc. to the people attending the festival, should be regarded as a religious charity. We are clearly of opinion that this contention is not correct. The distribution, no doubt, is to be amongst those who attend the festival in the temple, but it is not to be an offering to the deity, and it is not any ceremony which is a part of the temple festival itself. The *Vakil* (Pleader) did not contend that the small provision for making *archana* every Friday to the Goddess would make the trust a religious one. We, therefore confirm the finding of the Lower Court that the trust is not religious in its character"—Vide *Venkatachala Pillai-V-Taluq Board,* Saidapet, I.L.R. 34, Mad. p. 375. 1911.

The Act provided a machinery of supervision and administration. It consisted of the following institutions.

1. The Board of Commissioners.
2. The Temple Committees.
3. The Trustees,
4. and finally the servants of the institutions.

1. *The Board of Commissioners*

At the apex of the machinery was the Board of Commissioners to be constituted by the Local Government by notification (Clause 10 (11)). It was to be a body corporate with a perpetual succession, a common seal, a right to sue and the obligation to be sued (Clause 11 (2)). The Local Government also had the power of varying and even abolishing the Board by notification. (Clause 10 (b) and (c)).

Strength of the Board: The Board was to consist of President and not less than two or not more than four Commissioners. (Clause 11 (l)).

Qualifications of the Commissioners: Commissioners of the Board were to be persons professing the Hindu religion (Clause 12 (l)).

And the President in particular was to be

(*a*) A Barrister of England or Ireland or a member of the faculty of Advocates of Scotland of not less than five year's standing.

(*b*) A person who had held a judicial office not inferior to that of a subordinate judge or a judge of a Small Causes Court.

(*c*) A pleader with ten years' standing.

Subject to the above provisions the Local Government was empowered to appoint the President and other Commissioners and they were to be considered as public servants. The tenure of office of the President and Commissioners was five years and they were qualified for reappointment. They were to receive their

remuneration from the funds of the Board, and this was to the fixed by the Local Government, (Clause 14 (l) and (2)).

The Local Government had also the power of suspending or removing a Commissioner from his office if

(*a*) he was convicted by a Criminal Court for an offence which in the opinion of the Local Government involved moral terpitude,

(*b*) if he became of unsound mind, deaf, etc.,

(*c*) if he became bankrupt,

(*d*) for corruption, misconduct or other sufficient cause.

The Commissioner ceased to hold office if he ceased to profess the Hindu religion.

Powers and duties of the Board

The Board was

1. to determine the number, designations, grade and scale of salary, or other remuneration of its officers and servants.

2. to do all things which were reasonable and necessary to ensure that maths and temples were properly maintained and all religious endowments were properly administered and duly appropriated to the purpose for which they were founded.

3. to make by-laws which would be consistent with the Act or rules on the following subjects,

(*a*) The division of duties among the President and the Commissioners of the Board,

(*b*) The manner in which their decision could be assertained other than at meetings,

(*c*) the procedure and conduct of business at meetings of the Board,

(*d*) the delegation of powers of the Board to individual Commissioners or Committees of Commissioners,

(*e*) the security, if any, to be furnished by officers and servants of the Board,

(*f*) the books and accounts to be kept at the office of the Board,

(*g*) the custody and investment of the funds of the Board, Committees, and Trustees,

(*h*) the form and manner of applications to the Board,

(*i*) the details which should be included in or excluded from the budget of Committees and religious endowments,

(*j*) the conduct of all proceedings and business under the Act.

4. No by-law or correction or alteration in it, was to be made by the Board, unless it was published for public criticism and confirmed by the Local Government and all the by-laws duly confirmed, were to be published in the Fort St. George Gazette.

5. The Board had to maintain a register for every *math* or temple, showing the names of the past and present trustees, customs of the institutions, property, *dittam*, and scheme of administration, etc.

6. The Board had the power of appointing trustees to *maths* or excepted temples under the following conditions:

(*a*) In case of a dispute to the office,

(*b*) In case it could not be filled immediately,

(*c*) Hereditary trustee was a minor or of unsound mind—and in making these appointments, the Board was to give due consideration to the claims of disciples in case of math and to the member of the family if any, in case of temples.

7. The Board was to hear appeals from the hereditary servants of non-excepted temples against the order of the Temple Committee, and appeals from the hereditary servants of excepted temples against the order of the trustee.

In both the cases the Board's decision was to be final.

8. The Board had to keep regular accounts of receipts and disbursement and have them audited annually.

9. The Board had to hear appeals from the trustees, suspended or dismissed by the Temple Committees, and the Board's decision was to be final.

10. The Board had to hear appeals against the order of the Committees relating to *dittam* prepared by trustees.

11. The Board had to determine in case of dispute or doubt whether a non-hereditary trustee was qualified or not according to conditions stipulated in the Act.

12. The Board had the power of settling schemes in respect of non-excepted temples.

13. The Board received annual budgets from *maths* and excepted temples.

14. The Board had the power of enquiring into mismanagement of *maths* and excepted temples.

15. The Board had the power of settling schemes in respect of *maths* and excepted temples, and if within six months no appeal lay to Court against the order of the Board, its decision was to be final.

16. The Board had the power of diverting the endowment or the surplus funds of the endowment. under conditions stipulated in the Act.

17. The Board had the power of collecting contributions from *maths* and the temples at 1½ percent of their incomes.

The Act II of 1927 divided all the religious institutions into excepted temples and *maths* and the non-excepted temples. The Board of Commissioners had direct jurisdiction over the excepted temples and *maths* and the Temple Committees exercised general superintendence over the non-excepted temples. The whole Presidency of Madras was divided into various territorial units and a Temple Committee was in charge of a unit. Under the Board of Commissioners were therefore various Temple Committees for the non-excepted temples.

Temple Committees : their composition

The Committees were to be democratic in character consisting of such number of elected members of less than six and not more than twelve in number. However, the members of the first Committees were to be all appointed by the Local Government for one year. The Local Government was to fix the electoral area. The qualifications, disqualifications of the voters were stipulated in the Act.

Term of office of the Temple Committees was five years.

Powers and functions of the Temple Committees

1. The Committee had the power to determine the number, designation, grades and scales of salary and other remuneration of its officers and servants.

2. Subject to such control of the Board as might be imposed the President of the Committee had the power of appointing, transferring officers and servants, fining, suspending or dismissing them.

3. The Committee had general superintendence over temples under its jurisdiction.

4. The Committee had the power to make regulations in regard to the transaction of its own business.

The Committees constituted under the provisions of this Chapter were not entitled to exercise any jurisdiction over the *maths* and excepted temples and their trustees.

Managers and Trustees

At the next level of management were the managers and trustees of both *maths* and excepted and non-excepted temples who had certain common functions.

Trustees belonged to two classes :

1. Hereditary, and
2. Non-hereditary.

The hereditary trustee, according to the Act itself, meant " a trustee of a religious endowment, succession to whose office devolves

by hereditary right or by nomination by the trustee for the time being, or is otherwise regulated by usage or is specially provided for by the founder, so long as such scheme of succession is in force."[3]

While a non-hereditary trustee meant a trustee who was not a hereditary one. He was to be appointed by the Temple Committee and was to hold office for five years unless he was removed or dismissed earlier.

Both the categories of trustees had a few functions in common:

1. A trustee of every religious endowment had to administer its affairs and apply the funds and properties of the endowments in accordance with the terms of the trust, the usages of the institution and all the lawful directions which a competent authority might, and finally deal, as a man of "ordinary prudence would deal with such affairs, funds or properties if they were his own."[4]

2. They had to exercise all the powers incident to the beneficial management of the endowment and perform all duties imposed on him.

3. The trustee also had the power of appointing and punishing the servants of the temple and 4. had to maintain proper accounts of receipts and disbursements and to get these audited annually by auditors appointed by the Local Government.

Trustees of Non-excepted Temples

These were both hereditary and non-hereditary trustees. Their number was fixed by the Committees and these were not to exceed three and the non-hereditary trustees were to be appointed, removed and dismissed by the Committees. And the right to hereditary trusteeship was by right to heredity and in case of dispute the Committee could fill the office till some candidate succeeded in establishing his right to the office.

3. Madras Act I of 1925, vide *Acts passed by the Local Legislature of Madras in the year 1925*, Madras, 1926, p. 3.
4. Madras Act I of 1925, vide *Acts passed by the Local Legislature of Madras in the year 1925*, Madras, 1926, pp. 13-14.

Their Powers and Functions

1. The trustees had to obey the orders of the Committees. And to submit to them, proposals for fixing the *dittam* or the standard scales of expenditure in the temple. They also had to submit the annual budget of estimated income and expenditure to the Temple Committees.

Trustees of maths and excepted temples

Right to trusteeship here was either by right of heredity or by usage, custom or some other established procedure and interference by the Board under normal condition was not allowed. If a vacancy occurred and if there was a dispute, the Board had the power of filling the vacancy to discharge the functions till another eandidate established his right to the office.

Powers and functions of these trustees

1. Trustees had to submit annual budget to the Board showing the probable receipt and disbursements as well as the statement of actual receipts and disbursement of the previous year.

Definitions of terms

The Act also provided for the definition of various terms.

1. "Court" meant "the Court of the District Judge within whose limits a Committee exercises jurisdiction or a math oı temple is situated."[5]

2. "Excepted Temple" meant "(a) a temple which before 1801 was, and since 1863 has continued to be under the sole management of a trustee whose nomination did not vest in, nor was exercised by the Government nor was subject to the confirmation of the Government or any public officer, or (b) a temple founded since 1842 the right of succession to the office of trustee whereof is hereditary or specially provided for, by the founder."[6]

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5. *Madras Act I of 1925,* vide *Acts passed by the Local Legisluture of Madras in the year 1925,* Madras, 1926, p. 3.

6. *Madras Act I of 1925,* vide *Acts passed by the Local Legislature of Madras in the year 1925,* p. 3.

3. "Religious endowment" or "Endowment" meant "all property belonging to, or given or endowed for the support *maths* or temples or for the performance of any service or charity connected there with and includes the premises of maths or temples but does not include gifts of movable property made as personal gifts or offerings to the head of a math or to the Archaka or other employee of the temple."[7]

The Chapter VII of Act provided for the finance necessary to carry out the purpose of the Act by the Board and the Temple Committees. The following were the sources of revenue of these bodies:

1. Both the Board and the Temple Committees could recover the expenses incurred by them on legal proceedings from the funds of the endowments.

2. Every *math* and temple had to pay annually to the Board such contribution not exceeding one and a half percent of its income as the Board might determine.

3. Every temple other than excepted temple paid annually to the Committees such contribution not exceeding one and a half percent of its income as the Committee might, with the approval of the Board, determine.

And these revenues were to be assessed and notified to the trustee of every *math* and temple in the prescribed form.

4. A trustee within three months of the receipt of the notice, would pay the amount so demanded out of the funds of the *math* or temple, and in default of his doing so, the Court could, on application of the President of the Board or the Committee, recover the amount as if a decree had been passed for the amount by the Court against the religious endowment concerned.

Applications of funds

It was one of the important aspects of the Act. It described the authorities entitled to apply the funds to the objects, described in the Act itself. Thus:

7. Ibid. pp. 3-4.

1. The trustees were authorized to incur expenditure on health, safety and convenience of the disciples of the *maths*, pilgrims and worshippers of the temples.

2. The Act also provided for the *Cy praes* application of the endowment or surplus. The Board was authorized to divert the funds after fulfilling the following conditions :

It had to hold an inquiry and by order declare that "the purpose of religious endowment has from the beginning been, or has subsequently become, impossible of realization or that the machinery for effectuating the original purposes of the endowment has failed or no longer exists, or that after satisfying adequately the purposes of the endowment and after setting apart a sufficient sum for the repair and renovation of the buildings connected with the math or temple or the endowments attached thereto there is a surplus which is not required for such purposes;"[8] and after satisfying these conditions, the surplus could be appropriated to religious, educational or charitable purposes which should be consistent with the object of the *maths* or temples. Such order of the Board had to be published and the trustee or the person having interest could appeal within six months, to Court to set aside or modify the order. The Board could also appeal to Court to modify or cancel its decision.

The powers of the Local Government were partially described in the Chapter IX and elsewhere. The Local Government had not only considerable powers over the Board of Commissioners but also a few powers of direct control over the Temple Committees.

Powers of the Local Government

(*a*) Over the Board of Commissioners

1. To constitute, vary strength or territorial jurisdiction of the Board and abolish it.

2. To fix the strength of the Board within the stipulated limit.

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8. Madras Act I of 1925, vide *Acts passed by the Local Legislature of Madras in the year 1925*, Madras, 1926, p. 23.

3. To fix the remuneration of the Commissioners and the President.

4. To confirm or deny to confirm the by-laws, made by the Board of Commissioners.

5. To receive the audit reports of the accounts of the Board.

(*b*) Over the Temple Committees

1. To create, vary the strength and jurisdiction of a Temple Committee or abolish such a committee.

2. The Government was required to give notice to the Board of Commissioners and the Temple Committee before taking the action.

3. To notify an electoral area for the purpose of electing the members to the Temple Committees.

4. To cancel certain disqualifications in respect of the Committee members.

(*c*) Over Trustees

1. Local Government could restrict the Trustees' powers of punishment over hereditary servants of the temples.

The powers over the Temple Committees and the trustees were exercised on the advice of the Board of Commissioners. This was, however, not stipulated in the Act.

(*d*) Rule—making and other powers

1. To appoint auditors.

2. The Local Government had the power of making rules to carry out all or any of the purposes of the Act and in particular with reference to the following matters.

(*a*) all matters expressly required or allowed by this Act to be prescribed;

(*b*) the registration of electors;

(*c*) the nomination of candidates, the times of election, the mode of recording and counting of votes and the declaration and publication of the results of the election;

(*d*) the conduct of inquiries and the decision of disputes relating to elections;

(*e*) the powers of the President and the Commissioners of a Board to hold inquiries, to summon and examine witnesses and to compel the production of documents;

(*f*) the grant of leave, leave allowances, travelling allowances to the President and the Commissioners of a Board and generally the conditions of service of such President and Commissioners;

(*g*) the budgets, reports, accounts, returns or other information to be submitted to the Board;

(*h*) the qualifications for officers and servants of a Board, the grant of leave, leave allowances and travelling allowances to them, the establishment of provident funds for them and generally the conditions of their service;

(*i*) the organization of a staff of auditors, their salaries and allowances, the control of such staff, its relations with the Boards, Committees and trustees and generally the conditions of service of auditors;

(*j*) the calculations of the cost of audit and its apportionment among Boards and Committees;

(*k*) the manner in which the accounts of the Boards, Committees or endowments was be audited and published, the time and place of audit and the form and contents of the auditor's report; and

(*l*) the method of calculating the income of a religious endowment.

3. The power to make rules under this section was subject to the condition of previous publication."[9]

The Local Government could make rules altering and cancelling any of the schedules to the Act. And the draft of much rules were to be laid before the Legislative Council and the rules were

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9. Madras Act I of 1925, vide *Acts passed by the Local Legislature of Madras in the year 1925*, pp. 24-25.

not to be made unless the Legislative Council by resolution approved or modified or added to such rules.

The Court was given a few powers. The purpose of limiting the powers of the Court was, according to the framers of the Act, to end the protracted litigation.

Powers of the Court

1. To hear appeals from a trustee against the order of the Temple Committee, suspending, removing or dismissing him;

2. To hear appeal from a trustee or a person having interest against the order of the Temple Committee relating to changes made by the Committees in the *dittam* prepared by trustees;

3. To modify or cancel schemes settled by the Board for non-excepted temples on appeal from the trustee or a person having interest.

4. To modify or cancel a scheme settled by the Court itself on the appeal by the Board;

5. To modify or cancel schemes settled by the Board for excepted temples on an appeal from the *math* or the trustees of the excepted temple.

6. To modify or set aside the order of the Board diverting the funds of the endowments on an appeal from the trustee or any person having interest.

7. To hear appeals against the decision of the Board on the question of the application of the Act to the *math* or excepted temple;

8. Suits could be instituted by the Board, Committee or any person interested, in the Court to obtain a decree;

" (*a*) appointing or removing the trustee of a *math* or excepted temple,

(*b*) vesting property in a trustee,

(*c*) declaring what portion of the endowed property or of the interest therein shall be allocated to any particular object of the endowment,

(*d*) granting such further relief as the nature of the case requires." [10]

9. If the trustee of the religious endowment failed to pay the costs, expenses and contributions to the Board or the Temple Committee, on application by the latter two bodies, the Court could "recover the amount as if a decree had been passed for the amount by the Court against the religious endowment concerned." [11]

10. The Court could order that the costs, charges incidental to suits be meet out of the funds of the religious endowments.

The Act I of 1925, later the Act II of 1927 was therefore the first "comprehensive legislation to provide for the protection and maintenance of the religious endowments. It succeeded in establishing the corporate bodies in the Board of Commissioners and Temple Committees to carry out the purposes of the Act. However, due to certain inherent defects in the Act and its working, which subsequent chapters will describe at greater length the purposes of the Act could not be carried out.

Its defects

Some of these defects were

1. The definitions of and the distinction between the excepted and non-excepted, religious and charitable, public and private religious institutions, created a good deal of confusion. The judicial occupations of the Board increased greately on account of this.

2. The Local Government also was given too much power for a body such as the Board of Commissioners to develop into an independent statutory Board

The Local Government's powers over the Board of Commissioners, particularly their power of appointing and dismissing the Commissioners, Section II (1) and 15 (1) (2), was sure to destroy

10. Madras Act I of 1925, vide *Acts passed by the Local Legislature of Madras in the year 1925*, p. 26.

11. Madras Act I of 1925, vide *Acts passed by the Local Legislature of Madras in the year 1925*, p. 26.

the independence of body like the Board. In view of these extraordinary powers of the Local Government, the critical financial condition and the attitudes of its personel, the Board could not but subordinate itself to the wishes of the Government, and this finally led to its extinction and the establishment of a department in its place.

Again, the powers of the Local Government over the Temple Committees gave scope for interference. These powers, though exercised on the advice of the Board, were not conducive to the growth of a healthy, independent corporation.

3. Both the Board and the Temple Committees were given powers of general superintendence over the religious institutions with the result that the religious institutions were subjected to double control.

4. The members of the Temple Committees could be removed only if they suffered one of the disqualifications described in the Act. And no individual member could be removed for acts of misfeasance, misappropriation and misconduct. The non-inclusion of this disciplinary provision was a flaw in the Act.

5. There was no proper provision for the effective protection of properties of the temples and religious institutions.

6. The rate of contribution at $1\frac{1}{2}$ percent of the income of the religious establishment was not based on any data. The result was that the estimated income was always less than the actual income of the Board or the Temple Committees, and this was due not only to the unwillingness and inability of the trustees to pay but also to 'guessing' at the estimated income.

All these factors created difficulties in the working of the Act and it had, therefore to be amended several times.

12. vide Act I of 1925, *op. cit.*

CHAPTER V

LEGISLATIVE AMENDMENTS OF THE ACT BETWEEN 1928 AND 1946

The Madras Act II of 1927 was not the last piece of legislation relating to Hindu religious endowments. It was to be followed by ten more amending acts. The principal Act as modified by the subsequent Acts was inforce for 24 years, when it was repealed by the Madras Hindu Religious and Charitable Endowments Act of 1951.

The amending Acts were:

1. Madras Act I of 1928
2. Madras Act V of 1929
3. Madras Aet IV of 1930
4. Madras Act XI of 1931
5. Madras Act XI of 1934
6. Madras Act XII of 1935
7. Madras Act XX of 1938
8. Madras Act XXII of 1939
9. Madras Act V of 1947
10. Madras Act V of 1944
11. Madras Act X of 1946

The amendments were varied in tone as they were introduced for different purposes. The above eleven amendments therefore fall in one or more of the following categories:

1. Explanatory amendments.
2. For expansion of jurisdiction.
3. For facilitating administration.
4. For removing financial difficulties.
5. For social reform.
6. For change in policy.
7. Amendments as a result of judicial decision.

Madras Act I of 1928

Within a year of the passing of the principal Act, the administration was faced with a difficulty arising out of the non-fulfilment of certain conditions as stipulated by the Act.

Under Section 22 of the principal Act, the first Temple Committees were to be constituted by the Local Government for a period of one year and the succeeding committees were to be formed by election. During the first year of the administration, it was expected that the electoral rolls and other preliminaries would be completed. However this could not be done intime and the term of office of eight Committees was about to expire. The President of the Hindu Religious Endowments (here after to be referred as HRE Board) reported to the Government that "there are difficulties in the way of electoral rolls being got ready by the prescribed dates of these committees, it may not therefore be possible to hold elections in time—."[1] The Board also informed the Government of the inability of the Committees to meet the election expenses. The President then requested the Government to pass 'at the next sitting[1] of the Legislative Council, a special amending Bill "extending the period of tenure of office of the members of all the temple committees to three years without the Bill being referred to the Select Committee."[2]

During the proceedings of the Legislative Council, late Mr. S. Satyamurthi a member criticised the undemocratic move on the part of the Government in resorting once more to the appointment of the members of Temple Committees and not holding election.[3] Mr. Srinivasa Iyengar brought an amendment to reduce the period for extension from two years to one year and it was accepted.[4] Thus the Bill without being sent to the Select Committee was

1. *G.O. 4039, L. S. C. (L. & M.)*, dated 20—10—1927, see also *Fort St. George Gazette, Madras*, dated 18—10—1927, Part IV.
2. *Ibid.*
3. *Proceedings of the Madras Legislative Council*, dated 1—11—1927, vol. 38, pp. 220-224.
4. *Ibid.* pp. 286-96.

passed, enacting that, "if for any reason elections would not be held at the expiry of the period fixed, the Local Government may make fresh appointments thereto for a period of not exceeding one year..."[5]

The Madras Act V of 1929

The purpose of the amendment was to effect a social reform by preventing the dedication of young girls to temples.

The dedication of girls to tempels for services like singing and dancing before the deity was an ancient custom. In appreciation of their services, the girls were often awarded *inams* in the shape of lands and revenue. In course of time the institution of *Devadasi* became a repository of the art of dancing and music. But later on, though the institution which "originated with the noblest and the highest of motives...degenerated into something highly objectionable."[6] for it was believed that most of the devadasis became temple concubines. It was therefore decided to abolish the institution. There was already a precedent to this idea, set by the Mysore State which abolished it in 1909.[7]

The object of the Bill, therefore, was "to discourage the dedication of girls as *devadasis* for the service in Hindu temples, by freeing the lands, if any, held by them for such service, from the condition of service and making them the owners thereof and thereby removing an important inducement for the perpetuation of the system of dedication."[8]

The Select Committee which was appointed to report on the Bill, recommended a procedure for enfranchising the *Devadasis inams* which consisted of both land and land revenue, granted either by the State or by private, persons, and for this, instead of a mere proviso, a new section was added to the Section 44 of the principal Act. It laid down that in case of *inams* granted

5. *Fort St. George Gazette, Madras,* dated 7—2—1928, Part IV, p. 12.
6. *G.O. 400, Law (Legislative),* dated 19—9—1928.
7. *G.O.* 1560-71—*Muz* F. 84-5-3, *Bangalore,* dated 10—4—1909.
8. *Fort St. George Gazette, Madras,* dated 25—9—1928, Part IV, p. 85.

by the State, the *Devadasis* were to pay quit rent to the temples and in case of lands granted by private persons or temples themselves, the Devadasis were to pay rent fixed by the Collector to the temple concerned.[9] The motion enacting the Bill was passed,[10] as the Madras Act V of 1929.[11]

The Madras Act V of 1929 thus tried to introduce a social reform indirectly by enfranchising the *inams* and stopping the award; removing thus the inducement to dedication of girls to temples. The reform was carried to its logical conclusion by passing the Madras Act XXXI of 1947, the purpose of which was to stop dedication of *Devadasis* to temples.

The Madras Act IV of 1930

The proposed amendment and sought to expand the scope of the principal Act, to explain certain terms and facilitate administration.[12]

The scope of the Act was extended, in the first instance directly, by including the minor institutions and secondly indirectly, by defining the terms such as "excepted temples."

It also provided for the recovery of the properties of the temples from dismissed trustees, thus achieving the object of the Act and facilitating administration.

It increased and defined the powers of the Board in respect of Temple Committees and in the matter of deciding the nature of institutions.

Madras Act XI of 1931

The aim of the amending Act of 1931[13] was to provide for an effective supervision of the non-excepted temples which had

9. *G.O. 193-194, Law (Legislative)*, dated 17—4—1929.

10. *Proceeding of the Madras Legislative Council*, dated 1—2—1929, vol. 46. pp. 616-632.

11. *G.O. 251, Law (Legislative)*, dated 1—6—1929.

12. *Fort St. George Gazette, Madras*, dated 1—10—1929, Part IV, pp. 193-194.

13. *Fort St. George Gazette extraordinary, Madras*, Part IV, dated 9—3—1931.

been left uncared for, due to the absence of Temple Committee and secondly, to solve the financial difficulties of the Board and the Committees by providing effective machinery for the collection of arrears of contributions.

Non-excepted temples were those institutions which came under the jurisdiction of the Temple Committee whereas the excepted temples were supervised directly by the Board. Owing to several difficulties, mainly financial, most of these Temple Committees became defunct and in a few districts considerable delay would occur in the formation of new committees, and in some districts there were no committees at all. The result was that the supervision of the temples could not be carried out properly. The Board of Commissioners there upon requested the Government to rectify the anomaly. It was then decided that the Board would step in, where the Temple Committees were not functioning adequately and do what was necessary. It was proposed to add a new section after Section 60 of the principal Act.[14] The new section, entrusted to the Board the rights, powers and duties of the Committees where Committees did not exist. However, the powers and functions were subject to " such restrictions and modifications if any, as the Local Government may think fit."[15]

The second part of the Bill related to the amendment of Section 70 of the Principal Act. Previously Section 70 of the Act had described the procedure for the collection of contributions which the Board and the Committees levied on the religious institutions. The Board or the Committee would notify the religious institutions of the amount that they had to pay to the Board

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14. "60. A: Where for any local area or any class of or classes of institutions in any local area, a committee has not been constituted or is not for any reason functioning, the Local Government may, notwithstanding anything contained in the standing Act, authorize the Board or its President to exercise all or any of the rights and powers conferred, and to discharge all or any of the duties imposed on the Committee or its President respectively" vide *Fort St. George Gazette Extraordinary, Madras,* Part IV, dated 19—3—1931.

15. *Fort St. George Gazette (Extraordinary), Madras,* Part IV, dated 19-3-1931.

or to the Committee as the case may be, The trustee, within three months of receiving such notice, would pay the amount demanded; and if he failed, the Court could recover the amount as if a decree had been passed against the religious institution by the Court.

The actual working of the procedure by the Board and the Committees showed that the trustees invariably failed to pay the dues, and the sufficient amount of the contribution could never be collected to meet the running expenditure of the Board or the Committees. Both the Board and the Committees adopted methods of persuasion and warning, etc., and when all else failed, filing an executive petition. But the last method was both arduous and expensive and was a great drain on the trust funds. The Board thereupon informed the Government of the various difficulties and the necessity for amending the Section 70 of the principal Act. It was recommended that the arrears of contribution be collected as arrears of land revenue under the Act II of 1864.[16] The Board was anxious to have a more effective machinery for the collection of contribution. It was proposed that the arrears of contributions should be collected by the Revenue Department as arrears of land revenue on behalf of the Board and the Committees. It was expected that the procedure would act as a deterrent to the trustees who would be induced to pay the contribution more promptly than they ever did before.

The Select Committee tried to tone down the Bill by exempting from attachment certain properties of the religious institutions and by recommending a procedure to be adopted by the Collector to implement the decisions of the Board or the Temple Committees.[17] In respect of the latter, the Select Committee recommended that the trustee, on the receipt of the notification from the Collector, could either pay the amount or give reasons for his inhability to pay. The Collector thereupon transmitted those reasons to the Board or the Committee, who had the option of revising their

16. *G.O. 3929, L. & M.*, dated 20—10—1931.

17. *Report of the Select Committee*, vide *Fort St. George Gazette Extraordinary, Madras*, Part IV, dated 14—7—1931.

decisions and informing the Collector of the same. The Collector then proceeded to act on the lines proposed by the Bill.

The Bill was criticised by the Opposition in the Legislative Council. According to the critics the amendment cut at the very root of the endowment and defeated the very purpose of the principal Act which was to maintain, protect and preserve the properties of the endowment. It was also feared that the fraudulent trustees would allow the arrears to be collected and the properties be attached and sold in public auction which would be no less than an act of blasphemy. Further, it was argued that the *corpus* of the endowment could never be alienated. After assurance was given that certain properties would never be attached and that every attempt would be made before the ultimate procedure was resorted to, the Bill was passed into an Act.[18] The principal Act as amended provided for the following procedure for the collection of arrears of the contribution.

(a) The Board or the Committee would issue a notice to a trustee demanding a stipulated contributlon from his endowment. The trustee had to pay the amount within one month of the receipt of the notice. The trustee had to pay or state his reasons for not paying which the Board or the Committee would discuss and either confirm the old decision, modify or cancel it. If the trustee was still required to pay and if he failed, the Collector of the District in which the endowment was situated, would on receipt of the requisition from the Board or tne Committee collect the contribution as the arrears of the land revenue. (Section 70(2) (b) (b)).

(b) On the receipt of the requisition in the prescribed form, the Collector would issue a notice to the trustee requiring him to pay the amount or state objections against not paying it.

(c) The Collector had to forward the objections to the Board or the Committee who would discuss and either confirm their earlier decision or modify or cancel it. (Section 70(3) (4)).

18. *G.O. 360 Law (Legislative)*, dated 9—10—1931.

(d) On the receipt of the reply from the Board or Committee for the collection of the arrears, the Collector would first withhold the *tasdik* or any other allowance paid by the Local Government, and if that was not sufficient, proceed to attach the properties. Here, there was some restriciion,—the properties which had to be constantly used for the maintenance of the endowment like the tanks, idols, vessels, etc., could not be attached and no appeal was allowed against the order of the Collector and the Board. (Section 70 (5) (6) (7)).

The Madras Act XI of 1931 was the second in the series to increase the powers of the Board as against the Temple Committees. By the Madras Act IV of 1930, the Board got effective powers to control the committees. And by Madras Act XI of 1931 the Board took over the administration of the Committee if the latter did not exist or was not formed, and as already, stated this amending Act provided for an effective machinery for the collection of contribution. Though it provided for a more effective method of collection of arrears, there was a constant risk of temple properties being lost.

Madras Act XI of 1934.[20]

The aim of this amendment was to protect and preserve the properties of religious institutions.[21]

It was an ancient custom of the local kings to grant lands to the *Archakas* (priests) and others to do service to the temples. On the aovent of the British, the '*pattas*' were granted to the people who were holding the lnnds. Later on these *inamdars*, who were granted the *inam* lands in lieu of services to temple etc., often alienated these lands, with the result that *inams* were in possession of outsiders who did not perform any service and were therefore, lost to the temples. Besides alienating, the *inamdars* also defaulted in rendering service to the temples. The Revenue department, therefore, adopted a policy by which they began to

19. *Fort St. George Gazette extraordinary, Madras,* dated 9—3—1931.
20. *G.O. 390-391 Law (Legislative),* dated 22—10—1934.
21. *Fort St. George Gazette,* dated 28—11—1933, Part IV, p. 229.

resume the land (*inam*) and on the assumption that assessment also constituted the *inams*, *Pattas* were granted to the alienees and the assessment was paid to the deity or credited to the general revenues of the Local Government. By this procedure the interest of the religious institution suffered and it was thought necessary to protect it through amendment.[22]

Therefore, the Bill which was enacted[23] in 1934, added the following new sub-section (44-B) to the Section 44-A of the principal Act. It was laid down that "any exchange, gift, sale or mortgage and any lease for a term exceeding five years......of any inam granted for the performance of a......service connected with a math or temple......shall be null and void".[24] The Collector was granted the power, on the application of a trustee, Committee, Board or any person interested, to resume the *inam*. Thus the object of preserving of the properties of trusts was achieved through this amendment.

Madras Act XII of 1935

This Act sought to enlarge the jurisdiction of the Board, facilitate administration and define clearly certain relevant terms. Four important alterations were made in the principal Act by this amending Act.

(1) The Local Government was empowered to notify the religious institutions of mismanagement on the advice of the Board.

(2) The audit charges were to be met out of the funds of the religious institutions.

(3) Specific endowments were to pay contributions.

(4) The Board was empowered to direct taking of accounts of a trustee's management in a suit.

One of the novel features of the Act was the power of notification given to the Local Government. By clauses 3 and 8 of the Bill, a new chapter entitled "Chapter VI-A Notified

22. *Proceedings of the Legislative Council*, dated 10—11—1933, vol. 68, p. 892.

23. *G.O. 390-391 Law (Legislative)*, dated 22—10—1934.

24. *G.O. 468 Law (Legislative)*, dated 29—11—1934.

Temples "[25] was introduced. And it was explained in the statement of Object and Reasons" that experience had shown that the provisions of the Act relating to the framing of schemes in respect of some of the most important temples, were too inadequate to secure a smooth and efficient administration of the temples. The schemes settled by the Courts too were found to be defective in actual working, and for the modification of these schemes was desired, a suit had to be filed by the Board, which caused a great delay, and involved protracted litigation and heavy expenditure. It was therefore thought advisable to amend the Act so as to provide for placing the management of important temples on a more satisfactory footing. "Hence the present proposal in the amending Bill to give power to the Government in suitable cases to notify certain temples and place them under special management by a salaried Executive officer."[26] The Local Government thereby acquired power to notify temples which were mismanaged or temples in respect of which, schemes had been settled but were found to be defective in actual working.

In the Legislative Council the proposal was viewed as being too drastic for the administration of religious trusts. As a compromise, it was decided that the procedure for notification should be rendered judicial in nature.[27] The following procedure was adopted.

(1) The Government on the advice of the Board would issue a notification to temples belonging to the catagory described above.

(2) The temples were granted the opportunity to explain.

(3) The Board would then investigate the matter and report its decision to the Government.

(4) The Government, if advised to notify, would notify the temples.

25. *G.O. 4626, L. & M.*, dated 4—11—1933.

26. *Fort St. George Gazette, Madras*, dated 13—2—1934, Part IV, pp. 71–73.

27. *Proceedings of the Legislative Council, Madras*, dated 24—10—1934, vol. 73, pp. 299–321.

(5) As soon as the temple would be notified, any schemes settled by the Board or the Court or the rules made thereunder or the Temple Committees working over it, would be cancelled (Section 65-B).

(6) An Executive officer would then be appointed for such period and vested with such powers as the Board would decide.

(7) His salary was to be paid out of the trust funds.

(8) The notified temples were to pay 1½ percent of their gross income to the Board for the expenses incurred on the administration.

The financial difficulties of the Board and the Temple Committees were not resolved by the amending Act XI of 1931. Clause 4 of the Bill therefore sought to solve them. According to the provisions of the principal Act, the cost of auditing the accounts of the excepted temples and *maths* were to be paid out of the funds of the Board and the cost of auditing the accounts of the non-excepted temples were to be paid out of the funds of the Temple Committees. It was found, that neither the Board nor the Committees were able to pay the audit charges with the result that the accounts of many of the religious institutions remained unaudited. Since auditing was necessary for efficient administration, it was proposed to provide for the audit expenses from the funds of the religious institutions themselves. Besides, the principal Act was also silent about the cost of auditing the accounts of the Temple Committees themselves, though it was understood that the charges were to be met from the funds of the Temple Committees. It was, thought necessary to clarify the point by the proposed amendment. Hence to carry out these intentions a new section was substituted for the old Section 48 of the principal Act. It was:

"48 (1) : — the cost of auditing the accounts of any *math* or temple or any religious endowment attached to any *math* or temple shall be payable out of the funds of such *math*, temple, or religious endowment."[28] It was also laid down that if the

28. *Madras Act XII of 1935, vide the India Acts and the Madras Act,* 1935, *vide the Madras Law Journal Supplement, Madras,* 1935, p. 19.

cost fixed by the Board at 1½ percent of the gross income, were not paid in time, it would be recovered as arrears of land revenue (Section 48 (2)). As for the cost of auditing the accounts of the Committees it was to be fixed by the Board and met from the funds of the Committees (Section 48(3)).

By the Act IV of 1930, the powers of the Board in respect to Temple Committees were clarified; but its power to frame schemes still remained vague. Clause 5 of the Bill sought to remove this vagueness. According to the former Section 57 of the Principal Act the Board had the power to settle scheme in respect of excepted temples and *maths*. It was, however, not clear as to what exactly the Board should do while framing the scheme of administration. By the proposed amendment, a sub-section was added to the Section 57 of the principal Act describing the following powers of the Board. viz.,

(a) Fixing the numbers of non-hereditary trustees.

(b) Removing the trustees, both hereditary and non-hereditary.

(c) Appointing a new trustee in addition to the old hereditary or non-hereditary trustees.

(d) Associating honorary visitors with the management.

(e) Appointing Executive officers, etc.

An explanation was also added to the Section 57 to the effect that the Board had the power to settle schemes for the administration of the specific endowments.

It was also not clear whether the specific endowments were to pay contribution to the Board and Temple Committees under Section 69 of the principal Act. It was made clear in a judicial decision which laid down that *Kattalais* i. e., specific endowments, "were a religious endowment within the meaning of Section 9 (ii)."[29] So clauses 9 and 10 of the Bill made the point clear

29. Vide *The President of the Board of Commissioners for H.R.E., Madras,* vs. *Nagarthna Mudaliar & others,* 68 M.L.J. (1935), p. 549.

by stating that the specific endowments were liable to pay contribution under Section 69 of the principal Act.

There was another vague clause. It was not clear under Section 73 of the principal Act whether the Board had power to call for accounts from the trustees' management in a suit; this power was allowed to the Court under Section 92 of the Civil Procedure Code.[30] It was proposed to amend the Act and invest the Board with similar power. Therefore, clause (a) was added to Section 73 of the principal Act. This empowered the Board to call for accounts in a suit.

The Act XII of 1935 was one more step towards centralisation of powers in the Board of Commissioners. By the Act IV of 1930 minor religious institutions were brought under the scope of this Act and by defining the term 'excepted temples', many temples were brought under the jurisdiction of the Board. By the same Act, the Temple Committees were to be controlled more effectively by the Board and the Committees were gradually to lose power to the Board of Commissioners. By the Madras Act XI of 1931, the Board was empowered to assume the powers and functions of the Committees, if the latter were not existing. And now by the Act XII of 1935, the Government on the recommendation of the Board could notify the temples and suspend the Committees. The Board could also set aside the scheme framed by itself or by the Court and directly manage the excepted, non-excepted temples and *maths*. It was correctly observed by Mr. K. R. Venkatarama Iyyer in 1923 that the trustees and Committees would one day become tools in the hands of the Board and the Government. As explained above, subsequent event justified his observation. The Board, working from Madras could notify temples, put an end to the Committees, administer the temple directly, and appoint Executive officers in place of trustees. Inevitably local initiative, and control suffered with this centralization of authority in the Board.

30. T. L. Venkatarama Iyer, (ed.) *Malla on the Civil Procedure Code, Bombay,* 1965, pp. 385-411. See also J. D. M, Derrett: *Hindu Religious Endowments* vide D. E. Smith: *South Asian Politics and Religion, Princeton,* 1966, pp. 328-329.

Madras Act XX of 1938

Madras Act XXII of 1939

Madras Act V of 1947

These three Acts introduced social reforms of far reaching character. They were not aetually amending Acts, but main Acts which cancelled an ancient custom which the trustees were required to maintain.

The Malabar Temple Entry Act (i. e., Madras Act XX of 1938) was of a permissive character allowing the entry of a certain section of the people into public temples where the local public opinion favoured such reform. Section 40 required the maintenance of all ancient usages. One such usage was the exclusion of certain sections classes of Hindus from the public temples. This Act suitably altered Section 40 of the principal Act, and the trustees could throw open the temples if the public opinion so desired.

Later the Madras Temple Entry Authorization and Indemnity Act (Madras Act XXII of 1939), authorised and indemnified the trustees, officers and other persons for action taken in respect of entry into the Hindu temples by certain sections of Hindus who were hitherto excluded by custom and usage from such entry. This Act too inserted a suitable condition in the Section 40 of the principal Act.

However, these two Acts were inadequate to effect the reform as the provincial Government and others had to wait for the people to take the initiative and apply to it for approval. If the trustees were attitude, temples could not be thrownopen to all the people. To meet this awkward difficulty Act V 1947 stated that "the Government are fully satisfied that Hindu public opinion demands this reform and that the time had arrived for throwing open all Hindu temples in the province to the "excluded classes".[31]

Though by these three Acts one of the ancient customs was cancelled and to that extent, the principal Act which was responsible for the preservation of ancient customs was affected.

31. *G.O. 69, Legal,* dated 4—6—1947.

Madras Act V of 1944

The Madras Act V of 1944 and Madras Act X of 1946 were enacted during the Adviser's regime, when the Section 93 of the Government of India Act of 1935, operated. However, the foundation of both these Acts was in the Bill prepared by the Congress Ministry in 1939.[32] Before the Bill could be debated and legislated upon, the Congress Ministry went out of office. Since the Bill aimed at introducing certain drastic and controversial changes, it was thought fit to leave it to the next popular ministry to take up and enact it. In 1942, Mr. R. V. Krishna Iyyer, Special Officer, appointed to study the working of the Religious Endowment Board, (hence forth to be referred as HRE Board), recom-

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32. The following were the salient features of the Bill.

(1) The Board of Commissioners constituted under Section 10 of the principal Act, to be abolished and the supervision of the administration of the religious endowments to be taken over by a department of Government consisting of Commissioners, two Deputy Commissioners and one Assistant Commissioner.

(2) The religious institutions to pay contributions to the Government and the Government to pay to the officers in the department administering religious endowments from the Provincial revenues.

(3) Temples in the city of Madras hitherto excluded from the scope of the principal Act to be included.

(4) Distinction between excepted and non-excepted temples to be removed.

(5) The Temple Committees to be abolished.

(6) The ouster, with certain exceptions, of the jurisdiction of Civil Court.

(7) Disobedience of orders of statutory authorities made punishable and trustees to be put in possession of property by police.

(8) Provision for decision of disputes as to the rights, honours, usages and established customs by a special tribunal.

(9) Raising of the presumption that the religious *inams* consist of both the *waram.*

(10) Introduction of a provision with regard to *Kattalais* (specific endowments).

(11) Improvement of the system of audit and introduction of a provision for surcharge.

—vide *G.O. 1825, P.H.*, dated 13—6—1942.

mended a few drastic changes in the administration of the HRE Board. The same year i.e. in 1942,[33] the President of the HRE Board also represented to the Government that amendment in respect of certain provisions of the Bill of 1937, none of which raised fundamental issues or were of controversial nature, was absolutely necessary. In view of these representations the Government considered the subject afresh and appointed a non-official committee with Shri Rao Bahadur P. Venkataramana Rao Nayudu, a retired High Court Judge, as Chairman and five other non-officials including the President of the HRE Board as members to consider the whole matter and submit the proposal for the suitable amendment of the Act. On its submission the Government decided to implement the proposals of the Venkataramana Rao Committee and the Statement of Objects and Reasons embodying these proposals was published in order to elicit public opinion."[34]

The proposals were:

(a) Abolition of the Temple Committees.

(b) Appointment of Assistant Commissioners to discharge certain duties now performed by Temple Committees.

(c) Raising of contribution payable by all institutions to a minimum of 3 percent of their annual income.

(d) The grant of certain additional powers to the President of the Board to improve its working.

(e) Alteration in the system of audit so as to make it more effective.

Of these above five proposals, the last one relating to the change in the system of audit was criticised by the Society of Auditors of Madras. The Government, therefore, dropped it and a Bill embodying the other four proposals was therefore prepared.

Public reaction to these proposals was rather sharp in some quarters, while in others the Bill was welcomed. Those who did

33. *G.O. 1825, P.H.*, dated 13—6—1942.

34. *Fort St. George Gazette, Madras*, dated 19—10—1943, Part IV-A, pp. 91-93.

not approve of it criticised it on the ground that the change envisaged was of a fundamental nature and therefore ought not to be undertaken when the popular ministry was out of office. At the same time petitions and deputations in support of the proposals waited upon the Government.

The most important feature of the Bill was the abolition of the Temple Committees. It was stated in the Statement of Objects and Reasons that the Temple Committees had never worked satisfactorily in the Province. It further stated, "those constituted under Madras Act XX of 1863 were neither popular nor effective and are condemned by a committee which included Sir G. Muttuswami Iyyer and Sir C. Sankaran Nair. After the Madras Hindu Religious Endowments Act was passed in 1925, 32 committees were constituted but most of them were moribund, and only five committees were now functioning with elected members. Want of funds and existence of factions have impeded their working, and the Committees have frequently used their powers in disregard of the welfare of the institutions in their charge...Special Officer, Sri Diwan Bahadur R. V. Krishna Iyyer, who went into the question very carefully had no hesitation in recommending the abolition of Temple Committees and the Committees have unanimously supported this recommendation. The Government consider that this is an urgent reform which should be given effect to at once."[35]

Criticism against the proposal came mostly from the Temple Committees and some prominent members of the public. According to them, the change was of a fundamental nature and the proposal to abolish the Committees which were elected bodies with knowledge of local conditions, was considered as a retrograde step and was therefore, against the principle of Local-self-Government and democracy. Again to replace the Committee of honorary members with that of paid Assistant Commissioners would be financially disadvantageous.

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35. *Fort St. George Gazette, Madras,* dated 19—10—1943, Part IV-A, pp. 91–93.

To this the Government replied that they had abolished one Committee after another under Section 20(1) (c) of the HRE Act and there was no complaint from the public against the abolition. At the time of drafting of the Bill, only five Committees were working and even they, unsatisfactorily. The Government also drew attention to the presence of many deputations welcoming the proposal. The first proposal, therefore, was included in the Act amending the principal Act suitably.

The second proposal related to the appointment of Assistant Commissioners to do the work of the Temple Committees. Having decided to abolish the Temple Committees, appointment of officers for supervising the religious institutions in various districts became necessary. The Venkataramana Rao Committee had recommended the appointment of Assistant Commissioners on the abolition of Temple Committees. It had also advaised the Government to fix the number of Assistant Commissioners after the consultations with the Board. These Assistant Commissioners were to have all the powers of the former Temple Committees, and also such others as the Board delegated to them. They were however subject to supervision by the Board.

This above proposal was criticised again as a retrograde step. It was suggested that instead of abolishing Temple Committees, Assistant Commissioners could be appointed as Executive Assistants of the Temple Committees like the Commissioners of Municipality. To this, the Government replied that it was difficult to decide as to who should have the final authority and secondly the excepted temples were too many to be managed without the aid of Assistant Commissioners. The proposal was embodied in the Act.

The third proposal aimed at raising of the contribution payable by all the institutions to a maximum of 3 percent of their annual income.

Hitherto temples whose annual income was less than Rs. 200/- were not required to pay any contribution. Over 15,000 out of about 27,000 temples belonged to this category in the province.

Out of the remaining 12,000 temples, over 8,000 were non-excepted temples which contributed 3 percent of their income to the Board. The remaining 4,000 excepted temples and *maths* contributed only 1½ percent to the Board.

The Venkataramana Rao Committee recommended the removal of the distinction between the excepted and non-excepted religious institutions in matter of payment of contribution and all the institutions which hitherto paid it, were required to pay a uniform rate of 3 percent.

The proposal was criticised by the small temples and the trustees of excepted temples. The latter contended that the work of supervision over these temples did not justify the levy of such a high contribution. However, the enhancement was defended on the gronnd that, "it is impossible to effect any improvement in the administration of endowments without substantially augmenting the Board's finances. Although the Board has made every possible retrenchment in its expenditure, its funds are insufficient to meet legitimate expenses. In order to provide the Board with adequate funds to carry on its functions, it is proposed to levy a uniform contribution from all the institutions without exception at a rate not exceeding 3 percent of the annual income."[36]

The proposal was included in the amending Act and Section 69 of the principal Act was suitably amended, to read "every *math* or a temple or specific endowment attached to a *math* or temple shall pay annually for meeting the expenses of the Board such contribution not exceeding three percentum of its income as the Board may determine......"[37]

The fourth proposal was with regard to granting of additional powers to the President of the HRE Board in order to improve its working.

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36. *Fort St. George Gazette, Madras,* dated 19—10—1943, Part IV-A, pp. 91-93.

37. *Fort St. George Gazette. Madras,* dated 7—3—1944, Part IV-B, pp. 33-44.

The purpose of the clause was to confer on the President of the Board the status of an administrative head which was not laid down in the Act. It was explained that absence of the proviso led to disharmony in practice, necessitating the intervention of the Government in some cases. It was, therefore, proposed to make the President the administrative head of the Board and invest him with powers to transfer any pending proceedings from one Commissioner to another, to call for papers from any Commissioner, etc.

The main objection to the proposal was that it made the President an autocrat and that his powers were liable to be abused. The Government to this replied, that in the interest of the efficient working of the HRE Act, an increase in the President's powers was necessary. The Government therefore, decided to include the provision and the following new Section after Section 18 of the principal Act was added.

(1) By Section 18-A the President was given powers to constitute territorial divisions and assign functions, and

(2) by Section 18-B, the President was created administrative head of the Board with powers to transfer proceedings and call for records.

The Act V of 1944 framed by the Adviser's Government introduced changes of far reaching character. However, the credit for the innovation does not belong to the advisers, since the foundations of the Act had already been laid in 1939 by the Congress Ministry.

Although it was emphasised earlier that controversial issues would not be considered for legislation, the items which were included in the Bill were of a controversial nature. By abolishing Temple Committees and appointing Assistant Commissioners, all traces of democratic administration were eliminated.

It also substituted centralized administration in the place of a decentralized one. The elemination of the principle of election, and the concentration of authority in the Board were the controversial features of the Act.

Thus this Act had the effect of giving an impetus to the centralizing tendencies in administration which had been initiated by the Madras Act IV of 1930.

Madras Act X of 1946

This was the second important Act taken up in the field of religious endowments by the Government operating under Section 93 of the Government of India Act of 1935. As has been stated earlier, the foundations for these reforms were laid, not during the Advisers' Government, but under the Congress ministry. Though they were crystallised only subsequently by the Venkataramana Rao Committee in a Bill, prepared for the Advaisor's Government. Part of that Bill was enacted into a law by the Act V of 1944. The remaining proposals were taken up in 1945 and a Bill was framed and published for eliciting public opinion.[38]

The main features of the Bill were:

(*a*) Inclusion of temples situated in Madras city within the scope of the Act.

(*b*) Removal of the distinction between excepted and non-excepted temples.[39]

(*c*) Introduction of departmental audit.

(*d*) Levy of surcharge for any act of mismanagement by the trustees of the religious institutions.

(*e*) Creation of Audit Fund.

The Madras Act X of 1946 was the last of the amending Acts of the Act II of 1927 and contributed further to the centralizing tendencies of the HRE Board.

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38. *G O. 1825, P.H.*, dated 13—6—1942.

39. A good deal of litigation had taken place owing to the particular method of classifying the temples. Some of those cases were the following: (1) *Kallapally Krishnamurthy* vs. *Hindu Religious Endowments Board, Madras*. vide, 67, M.L.J. (1935), p. 384. (2) *Allaya Somayya Naicker* vs. *Hindu :Religious Endowments Board, Madras*. vide, A.I.R. 1938, p. 321. (3) *Madanapalo* vs. *Hindu Religious Endowments Board, Madras*. vide, (1937), M L.J. p. 830. (4) *Nagureddi* vs. *Hindu Reiigious Endowments Board, Madras*. vide, (1937), M.L.J. p. 485.

A Critique

Act II of 1927 applied to all public religious endowments, minor religious endowments whose annual gross income was less than Rs. 500 and the temples within the city of Madras were excluded from the scope of the principal Act. By the Madras Act IV of 1930, the principal Act was extended to minor religious endowments and to the temples in the city of Madras, and the Act XX of 1863 ceased henceforth to apply to the public Hindu religious endowments. While institutions like the excepted temples, over which the principal Act partially extended, were reduced "in number by giving new definition to the term by the Act IV of 1930, many excepted temples fell out of that category and joined the category of non-excepted temples and as a result greater control was exercised over them.

Expansion of the Board's jurisdiction and increase in its powers were taking place concurrently on other lines. On the one hand Temple Committees were subjected to more stringent control by the HRE Board and on the other, the trustees were brought under the direct and closer supervision by it. The former trend began with the Act IV of 1930 when the HRE Board was empowered to control the action of the Temple Committees. A step forward in this direction was the Act XI of 1931 when the work of the defunct Temple Committees was taken over by the HRE Board. By the Act XII of 1935 more temples were notified, cancelling the schemes of management and supervision of Temple Committees and bringing them under the direct control of the HRE Board, which exercised the control by appointing the Executive officers. The final step was the Act V of 1944 which abolished the Temple Committees and centralised the administration in the HRE Board.

The temple Committee were not the only ones to experience a decrease of their power, These very same Acts were also tightening the Board's hold over the trustees. By 'explaining' the term 'excepted temples' the category of non-excepted temples was enlarged, which resulted in greater control of there institutions by the Temple Committees and hence by the HRE Board. By

taking over the functions of the defunct Temple Committees under the Act XI of 1931, by notifying the religious institutions and appointing Executive officers under the Act XII of 1935, and by abolishing the Temple Committees, under the Act V of 1944, the Board came to possess powers of direct supervision and control over the trustees of the temples and *maths.* Further impetus to this trend was supplied by the Act X of 1946. By this Act, the distinction between excepted and non-excepted temples was removed and all institutions were placed on the same footing, subject to more or less the same degree of control. The same Act gave the HRE Board power to control and alter the budgets of the *maths* and temples. Coupled with this, were the powers of the Board to fix the *dittam*, control budget, appoint Executive officers to manage the secular affairs of the *maths* or temples, appoint Assistant Commissioners and exercise greater control over the religious institutions, decide age old question of honours and usage etc. By 1946 therefore the Board had become a powerful body at the expense of the temple Committees and the trustees. And its (Board's) action in curbing the powers of the managers of the religious instituions (ie. the temple committees or trustees or the priests) had been so effective that the local pronunciation of the HRE Board beginning as "HAICH. R. E. BOARD" found its way via HATE CHAREE (Priest) "BOARD" to "HIT-CHAREE BOARD" and was, after all, fully justified.

The various amending Acts also indicated a change in Governments towards administration of religious institutions policy. The abolition of distinction between excepted and non-excepted temples and the institution of the Temple Committees was a departure from the basic policy of decentralized administration. Though later the principal Act did provide for the abolition of the temple Committees, this abolition, accompained as it was with the appointment of Assistant Commissioners in their place, presaged yet another departure from the old administrative machinery.

The propriety of legislatating the two Acts, Act V of 1944 and Act X of 1946 was questioned in some quarters. The late Sir Alladi Krishnaswami Iyer commenting on the Bill of 1945,

(which finally became Act X of 1946) recommended that it ought to be left to a popular ministry to legislate into an Act. He argued, "An examination of various provisions of the Madras Hindu Religious Endowment (Amendment) Bill, 1945, make it quite clear that the proposed amendment is not of a formal character intended to remove administrative difficulties experienced in the working of the machinery erected under the existing statute for effective supervision and control or religious endowments. The need for duly constituted Legislature in the Province and a popular ministry responsible to the Legislature undertaking a measure of taxation which was recognized by His Excellency the Governor in dropping the Agricultural Income Tax Bill applies with equal force to a measure of the present description. I am quite confident that if His Excellency's attention is invited to certain aspects of Bill, he would not precipitate the passing of the measures before the Legislature meets next year after the elections and a normally constituted Government begins to function."[40] While this was no doubt a legitimate criticism, these two Acts were not exactly precipitious. The trends towards administrative centralization had been set and these two Acts merely forced the pace. Besides, as pointed out earlier, the foundations of these Acts had been laid by the Congress ministry and the measures adopted by the Adviser's government were substantially similar to these envisaged by the Congress ministry. Finally these trends culminated in the Act of 1951, by which the Board was abolished and a special department was established to supervice the Hindu religious institutions in the State of Madras.

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40. *The Hindu, Madras*, dated 22—10—1945.

CHAPTER VI

THE MACHINERY OF SUPERVISION

(a) *The Board of Commissioners for HRE*

The purpose of the Act I of 1925, as stated in the preamble, was "to provide for the better governance and administration of certain religious endowments......"[1] In order to carry out the purpose, the supervisory machinery was envisaged in the Act itself. It consisted of two institutions:

(a) The Board of Commissioners for HRE.

(b) Temple Committees.

Both these institutions were corporate in character, which could be set up, varied and abolished by the Local Government.

The jurisdiction of the HRE Board was extended over the whole Presidency of Madras. Powers of general superintendence were exercised by the HRE Board over all temples and endowments, whereas powers of special nature were exercised over the excepted temples and *maths.*

The jurisdiction of the Temple Committees extended to definite 'areas' into which the Presidency of Madras was divided. These areas corresponded to the revenue districts of general administration. The Temple Committees had powers of general superintendence over non-excepted temples within its jurisdiction. The Temple Committees were therefore not the field offices of the HRE Board but independent agencies. The Board had its own inspectoral and regulatory staff in the districts.

The above supervisory machinery operated till 1944 when the Temple Committees were abolished and Assistant Commissioners were appointed. The new machinery consisted of the HRE Board

1. Act I of 1925 vide *Acts passed by the Local Legislature of Madras in the year 1925*, p. 1.

and the Assistant Commissioners. And it operated till 1951 when the HRCE (Hindu Religious and Charitable Endowments) Act of 1951 was passed and the Act II of 1927 was repealed and the Board type of management was substituted by the department type.

Powers of the HRE Board

Supervisory: Under Section 18 of the Act II of 1927, the HRE Board exercised powers of general superintendence over all religious endowments within the Presidency of Madras and did whatever was reasonable and necessary to ensure that *maths* and temples were properly maintained and that all religious endowments were properly and duly appropriated to the purposes for which they were founded. The exercise of the latter power gradually increased the responsibilities of the HRE Board and its functions.

Inquisitorial: To carry out efficiently the supervisory functions, the HRE Board was invested with large powers of inquisitorial nature. (a) The Board through its Commissioners enquired and investigated into the administration of the endowments. (b) It made local enquiries through its inspectoral staff, who were expected to report full particulars about: (i) the *maths*, temples and their history, (ii) the endowments and their managements, (iii) the public or private character of the institution, (iv) classification of religious institutions into *maths*, excepted temples, non-excepted temples, etc., (v) gross annual income of the institution. (c) It had to make preliminary enquiry necessary for the framing of a scheme (Section 62). (d) The power to scrutinise the annual verification registers which every trustee was expected to keep and it even possessed powers to make alterations, omissions or additions. (e) and also the power to assess the income of religious institutions in order to fix the contributions payable under Sections 68 and 69 (Section 70).

Administrative: In this area the Board exercised (a) the power to determine from time to time the number of designations, grades, scales of pay and other remunerations of its officers and servants, (b) the power of appointing non-hereditary trustees in certain cases

and also suspending, removing and dismissing such trustees (Section 51), (c) the power of suspending, removing and dismissing hereditary trustees (Section 53-A), (d) after the amending Act X of 1946, the power to appoint a person to manage the secular affairs of a *math* and to have the trustee report the appointment of manager to it (Section 61-A), (e) powers of administration vested in it by certain schemes, (f) the power to issue administrative orders in respect of schemes framed and to see that they were executed by the trustees of Temple Committees or Assistant Commissioners. (g) the power to permit the sale of property in trust, (h) the power to issue administrative order to remedy cases of maladministration or misapplication of funds when brought to its notice by any person interested in the trusts, (i) and lastly, the power of appointing hereditary trustees in case of dispute.

Judicial: The HRE Board was also a tribunal vested with by a discretionary powers in matters relating to Hindu religious endowments. It could (a) decide whether a temple was public or private, (b) frame schemes of management for excepted temples, *maths*, non-excepted temples and specific endowments (Section 57), (c) start proceedings for notification against a temple or endowment in case they were mismanaged (Chapter VI-A), (d) decide disputes relating to custom and usages of temples, (e) decide the question whether the Act applied to endowments partly religious and partly charitable (Section 77), (f) divert the surplus funds of the religious institutions for religious, educational and charitable purposes not inconsistent with the object of *maths* or temples (Section 67), (g) settle disputes as to whether an institution was a *math*, or a temple, whether a trustee was a hereditary trustee as defined in the Act and whether a property was a specific endowment (Section 84). (i) hear appeals from the office-holders and servants of the Temple Committees and temples (Section 43 (3)). (j) hear appeals from the trustees of non-excepted temples, punished by the Temple Committees (Section 53 (3)). (k) hear appeals against the order of the Temple Committee or the Assistant Commissioner in matter of fixing of *Dittam* of expenditure (Section 55 (4)). (l) sanction the institution of suits in Court (Section 73).

Legislative: The HRE Board had quasi-legislative powers relating to the framing of rules and bye-laws which were subject to powers of alterations, confirmation and cancellation of the Local Government. Matters on which the Board could frame rules or bye-laws related to carrying out of the business of the Board (Section 19).

The exercise of the above powers either by the President, or a single Commissioner, or a committee of the Board or by the Board as a whole was determined by the bye-laws under Section 19 (1).[2]

Powers of the President of the Board

The President had the power to constitute territorial divisions and assign functions and duties to respective Commissioners (Section 18-A). The President who was an administrative head by Act V of 1944) had power to transfer proceedings from one committee of the Board to another and call for records from Commissioners. He also appointed and dismissed servants of the HRE Board and maintained discipline among them. He had power of constituting the committees of the Board.

Whereas every Commissioner exercised powers of administration conferred on the HRE Board in respect of matters pertaining to his division.

Powers exercised by the Committees of the Board

The committees of the Board would be constituted by the President. The committee would consist of two Commissioners, one of whom would be the Commissioner of the division concerned. The committees had the power of granting exemption, staying, modifying the orders of the Temple Committee or the Assistant Commissioners; taking over the powers of the Assistant Commissioners in case of default by them; disposal of appeals from trustees; supersession of hereditary trustees if he became subject to any disqualification; settlement of dispute whether a trustee was qualified or not; settlement of schemes; enquiry into

2. *G.O. 352, L. & M.*, dated 27—1—1927.

mismanagement; sanction of alienation of property; application of the Act partly to religious and partly to charitable institutions; settlement of a dispute whether a religious institution was a temple or *math* and whether a trustee was a hereditary trustee or not.

Powers exercised by the committees of the Board of whom the President was one of the members

They had the power

(a) to issue order relating to surcharge or the levy of fine on trustee for any act of misappropriation of funds:

(b) decide the *Cy pres* application to surplus funds of religious endowments;

(c) decide disputes relating to customs and usages of temples;

(d) to suspend, remove, dismiss hereditary trustees.

Powers of the HRE Board as a whole

It had the power to frame and draft rules and bye-laws.

Thus the executive and supervisory powers were carried out by a single Commissioner, the inquisitorial and judicial powers by the committees of the Board and legislative powers by the whole Board.

Organization of the HRE Board

The first Board consisted of one President and four Commissioners. The first President, the late Sir T. Sadasiva Iyyer, was appointed by the Local Government under Section 9 (2) of the HRE Act I of 1925 and assumed office in February, 1925.[3] For the appointment of Commissioners, the Local Government constituted a selection Committee under the chairmanship of the Hon'ble Mr. Justice M. Venkatasubbha Rao, B.A., B.L.[4] The Committee recommended the names of four candidates for the commissionership of the Board.[5] The main consideration of the Committee

3. *G.O. 592, L. & M.*, dated 19—2—1925.

4. *G.O. 321, L & M.*, dated 27—1—1925.

5. *G.O. 1145, L. & M.*, dated 3—4—1925.

was to avoid selecting those who had retired. All the Commissioners as well as the Presidents were graduates in law and with more than fourteen years' standing. However, of the five Commissioners (including the President) only two were trustees in their own capacity. All the Commissioners held honorary posts of various institutions. Throughout the existence of the Board, its normal strength was five members, viz., the President and the four Commissioners. And only rarely it consisted of one President and the Commissioners. The tenure of office of the Commissioners was five years.

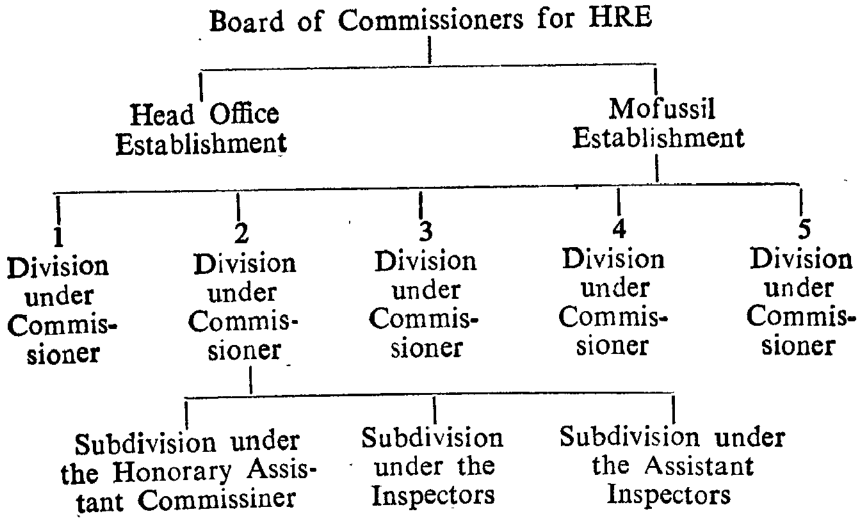
To carry out these functions the Presidency of Madras was divided into five territorial divisions :[6]

Name of the Commissioner	Name of the District
1. Divan Bahadur T. Sadasiva Iyyer, B.A., B.L.	Malabar and South Kanara.
2. R. Surya Rao, B.A., B.L.	Ganjam, Godavari, East Kistna and West Kistna.
3. D. S. Chidambaram Pillai, B.A., B.L.	Tanjore, Trichinopoly, Madura, Ramnad, Tinnevelly.
4. Rao Bahadur Chengayya Pantalu Garu, B.A., B.L.	Guntur, Nellore, Cuddapah, Kurnool, Bellary, Anantapur, Chittoor.
5. P. V. Nataraja Mudaliar	Chingleput, North Arcot, South Arcot, Salem, Coimbatore, Nilgiris.

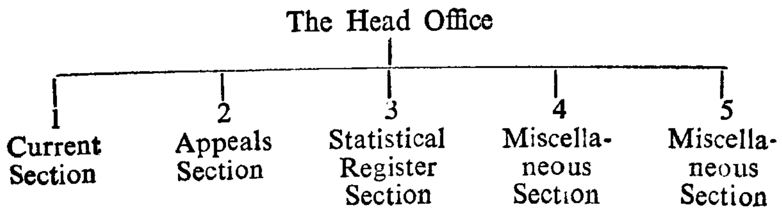
Each of the Commissioners had to carry out the duties allotted to him in his division. However the territories were often reallocated. The Board had direct powers of supervision and control over *maths* and excepted temples.

6. *First Administration Report of the HRE Board, Madras*, 1925–1926, p. 3.

Organizational Chart of the HRE Board



The Head office establishment of the first Board in 1925–1926, consisted of five sections. Each section dealt with the correspondence of particular division into which the presidency was divided and was placed under respective Commissioners. Besides each of the Sections dealt with the following work.[7]



Current Section: Looked after fair copying, examining, despatching, custody of records, stationary, indexing.

Appeals Section: Concerned with appeals to the HRE Board.

Statistical Register Section: Concerned with the statistical work of all sections, and periodic returns from the mofussil officers.

Miscellaneous Sections: These two sections looked after the correspondence relating to five divisions.

7. *G.O. 3821, L. & M.*, dated 3—9—1926.

The following were employees of the Board in its Office.[8]

Description of Appointment	Pay	In 1925	In 1926
1. Secretary	400–40–600	1	1
2. Manager	200–10–250	1	1
3. Superintendent	125–7½–200	2	2
4. Upper Division Clerks	60–5–120	7	10
5. Lower Division Clerks	40–4–60–3–75	10	14
6. Stenographers and Typists	50–5–100	6	5
7. Attenders	22–1–30	5	6
8. Sergeant	30–1–40	1	1
9. Duffadar	25–1–35	Nil	1
10. Chobdars	20–½–25	4	5
11. Peons	15–½–20	15	15

Secretary: He was responsible for the proper administration of the Board and was in charge of the whole establishment. He had, therefore, to supervise all sections and attend to miscellaneous items of work. He also had to keep himself in close touch with the correspondence of all the divisions so as to be able to attend to all the urgent work of the Commissioners when they happened to be on tour.

Manager: Under the Secretary there was a Manager. He had to maintain a statistical register and to scrutinize the periodical returns from the mofussil offices. He was also in charge of a section dealing with one territorial division as well as the current

8. *First Administration Report of the HRE Board, Madras*, 1925–1926. p. 39.

HEAD OFFICE ESTABLISHMENT OF THE HRE BOARD (As reorganized in 1937)

- **(1) Branch** — Administrative Branch *under* the Secretary
  - **1 Section** — A *under* Superintendent or Upper Division Clerk
    - Vizagapatam, East Godavari, West Godavari, Kistna
    - *also work connected with* Board Meeting, Govt. Reference, Register Collection and compilation of statistics from all Sections except AR, BR, CR, DR.
  - **2 Section** — B *under* Superintendent or Upper Division Clerk
    - Guntur, Nellore, Chittoor, Anantapur, Cuddappah, Bellary, Kurnool
  - **3 Section** — C *under* Superintendent or Upper Division Clerk
    - Tinnevelly, Kurnool, Trichinopoly, Tanjore
  - **4 Section** — D *under* Superintendent or Upper Division Clerk
    - S. Arcot, Chingleput, N. Arcot, Salem, Coimbatore, Nilgiris, Malabar, S. Kanara
  - **5 Section** — Fair copy & Despatch section *under* Superintendent
- **(2) Branch** — Revenue Branch *under* the Manager
  - **1 Section** — AR *under* Superintendent or Upper Division Clerk
    - Vizagapatam, East Godavari, West Godavari, Kistna
    - *also work connected with* Opening & distribution of *tappals* Circular Register. Administrative Reports. Collection & compilation of Statistics from AR, BR, CR, DR. Board Orders Register. President proceedings Register.
  - **2 Section** — BR *under* Superintendent or Upper Division Clerk
    - Guntur, Nellore, Chittoor, Anantapur, Cuddapah, Bellary, Kurnool
  - **3 Section** — CR *under* Superintendent or Upper Division Clerk
    - Tinnevelly, Ramnad, Trichinopoly, Tanjore
  - **4 Section** — DR *under* Superintendent or Upper Division Clerk
    - S. Arcot, Chingleput, N. Arcot, Salem, Coimbatore, Nilgiris, Malabar, S. Kanara
  - **5 Section** — Accounts & Cash *under* Superintendent or Upper Division Clerk
- **(3) Branch** — Legal and Judicial Branch *under* Senior Superintendent
- **(4) Branch** — Miscellaneous Branch (or Sections to various branches)

section. The cashier was attached to this section and therefore the Manager was also a Head Accountant.

Superintendents: Superintendents were in charge of a section each.

The clerical staff was divided into five sections.

Mofussil Establishment

There were three categories of the mofussil establishments. One category was under an Assistant Commissioner; the other under the Inspectors and the third under the Assistant Inspectors. When the HRE Board was constituted in 1925, there were no mofussil establishments, they were established in 1926.[9]

Mofussil Establishment

Description of appointment	Scale of Pay	As it stood on 1926
1. Honorary Assistant Commissioner	Maximum Allowance of Rs. 50/- P. M.	5
2. Inspectors	120–5–150	10
3. Assistant Inspectors	50–5–75	13
4. Clerks under Inspectors	25–1–35	10
5. Temporary Clerk under Honorary Assistant Commissioner, Ganjam	30	1
6. Peons under Honorary Assistant Commissioner, Inspector, Assistant Inspectors	12	28

9. *First Administration Report of the HRE Board Madras*. 1925–26, p. 39.

The Honorary Assistant Commissioner was an honorary official of the Board, while the Inspectors and Assistant Inspectors were employees of the HRE Board.

The Honorary Assistant Commissioners were paid a honorarium of Rs. 50/-. They were appointed by the President (Section 13), and usually these were men with local influence and leisure, and reputed to be pious and public spirited. They were sometimes appointed in addition to the paid inspecting staff in the localities concerned. "They were required to help the Board in getting information about the history, properties, incomes, and usages of administration of the endowment concerned therewith. They were also expected to help the Commissioner of the Division concerned in the matter of making local enquiries about any grievances and complaints that may be referred to them for report...... and help the Commissioner in the working of the Act".[10] The object of creation of this category of staff was to economize on administration, to secure local co-operation for the administration of the Board.

Similarly, the duties of the Inspectors and the Assistant Inspectors were 1. investigation 2. collection of contribution 3. explaining the provisions of the Act to the public and infuse confidence in them 4. collect full information about the temples, *maths*, endowments, the history of managerial machinery, income, nature of the endowments (private or public or *maths* or temples, etc. 5. They had also regulatory and executive functions as they had to supervise the institutions and execute the orders of the Commissioners.

Thus, the executive orders were sent by the Board through the respective Commissioners to the mofussil staff and the information, etc., gathered by the inspectoral staff went direct to the President of the HRE Board.

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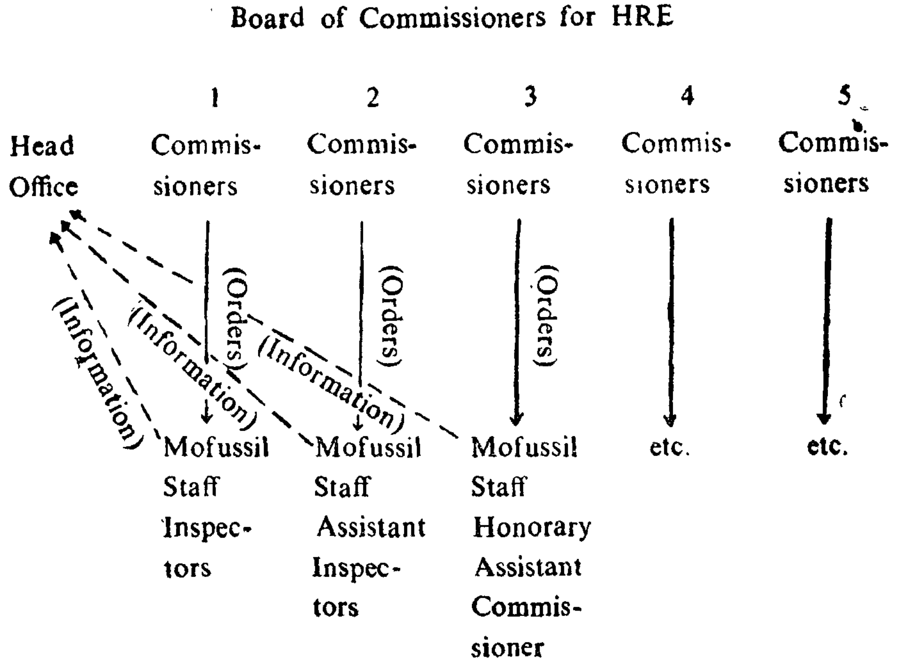
10. *G.O. 2056, L. & M.*. dated 12—5—1926.

Flow of work



Besides the inspectoral staff of the mofussil, a new category of field office was coming up and that was due to the fact that the HRE Board no longer confined itself to supervisory functions but also undertook the managerial functions. The new class of field officers were the Executive Officers who were in fact the managers of the 'notified temples.' Formerly, if a temple was mismanaged the HRE Board would frame a scheme of management. Sometimes even this scheme would work badly and mismanagement would continue. To remove this, Board was invested with a new power i. e., of notification of temples by Madras Act XII of 1935, which amended the principal Act. According to this, if mismanagement was brought to the notice of the Board, it could give notice to the trustee to show cause why the religious endowment should not be notified and the trustee was given an opportunity to explain the matter. If he failed, the temple would be notified under Section 65-A. After notifying, the Board would appoint Executive Officer to manage the affairs of the temple for a specified period.

The duties of the Executive Officers were enumerated in the Board's Order No. 1802, dated 30—7—1937. These were:

(a) To take possession of properties, records, colleet income, make disbursement and perform services.

(b) To take over the duties of the trustee of non-excepted temples.

(c) To prepare budget for *Kattalais* if any and submit it to the Kattalaidar and after his scrutiny to the HRE Board,

(d) To prepare *dittam* after consulting the trustee and submit it to the HRE Board.

(e) To maintain accounts and get them audited.

(f) Keep an office and maintain a record of all *kattalais.*[11]

(g) Inventory to be taken of the property of the institution and the kattalais.

(h) To lease ont land for five years.

(i) To maintain office, staff it within sanctioned limit, take disciplinary acti on against the staff of the office.

(j) The Executive Officers were to be paid from the funds of the institution or the *Kattalais.* He was to receive all the honours in the temples. The HRE Board could issue directive to him if they thought it fit. The Executive Officers were not the Inspectors but regular managers of notified temples, appointed by the HRE Board and responsible to the Board.

Thus the functions of the HRE Board were increasing by leaps and bounds. Already a number of Temple Committees had become defunct and there were only five Temple Committees functioning at the end of 1931.[12] As the functions of the Board began to increase, the staff also increased and the old organization had to be properly geared to the new responsibilities, This necessitated reorganization. During the Board's existence there were two major

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11. *Kattaiais*—Specific endowment for a specific purpose, i.e., *puja* etc.

12. *G.O. 200, L. & M.*, dated 18—1—1932.

proposals of reorganisation implemented. The Head Office was recognized in 1937.[13] and the mofussil offices were reorganized in 1944. There was reorganization for the third time which mainly related to the personal management.

Reorganization of the Board's functions, 1937

The work attended to by the Head Office was divided into three main categories, viz.,

1. Administrative work,
2. Revenue work,
3. Judicial work.

There were three central officers, each of whom was in charge of a branch of work.

The following were the functions allotted to each of the several branches:

1. *Administrative work*

This branch of work related to control and supervision of the administration of the religious endowments and dealt with some of the important duties of the Board. It maintained registers of endowments under Section 38, scrutinized budgets of religious endowments and gave sanction for contracting loans on behalf of religious endowments, appointed trustees, appointed auditors, took disciplinary action against the trustees, settled schemes of management, undertook notification proceedings under Chapter VI-A of the Act.

2. *Revenue work*

It concerned itself with the assessment, levy and recovery of the contributions due to the Board. It maintained a demand register and subsidiary registers relating to levy and recovery of contributions. It issued requisitions to Collectors for recovery of

13. *G.O. 3169, L. & M.*, dated 18—8—1937.

arrears of contributions and disposal of objections taken before the Collectors by the trustees of endowments.

3. *Legal and Judicial work*

This branch concerned itself with the files relating to petitions in Courts, to which the Board was a party. It briefed lawyers and made arrangements for gathering evidences for the Board and for the proper conduct of litigation. It had to recover cost ordered to the Board by the Court, and also recover legal cost under Section 68. It dealt with the amendments of the Act, rules and bye-laws.

Judicial work related to the judicial inquiries conducted by the HRE Board. The clerks concerned, acted as the bench clerks at the inquiries.

There were also a few miscellaneous types of work pertaining to: 1. stores, 2. records, 3. audit of the Board's accounts, 4. preparation of the Board's budget, 5. preparation of the Board's annual Administration reports, etc.

These types of work were distributed among several sections which were constituted as a result of reorganization. There were four Administrative Sections, four Revenue Sections, a Legal and Judicial Section, an Account Section to which stores was attached, a Cash Section, a Records Section, a Fair-copying and Despatch Section.

Thus, the Administrative Branch was divided into four Sections. The Secretary was in charge of the whole branch. He was also in charge of the whole administration of the Board and leave applications, etc. had to be sent to him. The various sections in the Administrative Branch were supervised by a Superintendent or a Senior Upper Division Clerk.

Similarly, the Revenue Branch was divided into four sections. The Manager was in charge of the whole branch, besides being

in charge of account and cash section, while each section was in charge of a Superintendent.

There was one section dealing with the legal and judicial work. A Superintendent specially deputed by the President was in charge of this section, besides being responsible for miscellaneous types of work.

To each of the Administrative and Revenue Sections were allotted a certain number of districts, and they looked after the administrative and revenue functions of the districts under their charge.

I	Vizagapatam	
	East Godavari	Administrative Section A
	West Godavari	
	Kistna	Revenue Section A R
II	Guntur	
	Nellore	Administrative Section B
	Chittoor	
	Anantpur	
	Cuddapah	Revenue Section B R
	Bellary	
	Kurnool	
III	Tinnevelly	
	Ramnad	Administrative Section C
	Trichinopoly	
	Tanjore	Revenue Section C R
IV	South Arcot	
	Chingleput	
	North Arcot	Administrative Section D
	Salem	
	Coimbatore	
	Nilgiris	
	Malabar	Revenue Section D R
	South Kanara	

Besides this, the Section A attended to the work connected with the Board's meetings, maintenance of Government references, registers, collections and compilation of statistics from all sections except AR, BR, CR, DR, compilation of progress reports of the inspecting officers, drafting and issuing of office orders, maintenance of stock files of the office orders.

Similarly, in addition to Revenue work, the AR Section was to to attend to the maintenance of circulars, registers, administration reports, collection and compilation of statistics from AR, BR, CR, DR, maintenance of Board's orders register, President's proceedings register.

This reorganization was mainly to accelerate collection work. However, the reorganization did not seem to bring an effective co-ordination and caused inconvenience and even duplication of work. The Revenue Section did not have work throughout the year. Its work, that of preparing demand, collection and balance statements would be in full swing between 1st July to 31st December. Thus for the remaining period there was very little work for this section. It would have been better to combine the administrative and revenue sections of each district and then divide the districts among the sections. That would have provided for equal division of work and avoided its duplication.

Second Reorganization: 1944

Another major reorganization was in 1944. It related to the mofussil establishment. This reorganization was the direct result of the passing of the Madras Act V of 1944. This Act introduced a far reaching alteration in the supervisory machinery for the religious endowments. Hitherto there were the Board of Commissioners for HRE and the Temple Committees, both independent of each other, possessing independent jurisdiction and powers. The HRE Board was given powers of superintendence of religious endowments situated in the Presidency of Madras, whereas the Temple Committees had powers of superintendence over religious endowments situated in the 'area' under their control. Though this was rather vague and led to certain conflicts between the Board and the Temple Committees, the presumption was that both bodies were to be autonomous units. The Act V of 1944 abolished the distinction by abolishing the Temple Committees and substituting Assistant Commissioners. The supervisory machinery for the religious endowments became a contralized agency in place of the formerly decentralized one in the shape of HRE Board and the Temple Committees. The office of the Assistant Commissioners became the field office of the Board.

Assistant Commissioners

The Assistant Commissioners were "to be appointed by the Provincial Government, after consulting the Board for the purpose

of assisting the Board in exercising its powers and discharging its duties under this Act ".[14] The Assistant Commissioners were to be considered as servants within the meaning of the Indian Penal Code.

The jurisdiction of the Assistant Commissioners was to be determined by the President of the HRE Board, and he was also empowered to transfer, withdraw proceeding spending before the Assistant Commissioners. The Board could delegate its powers and duties to the Assistant Commissioners, could revise the decisions of the Assistant Commissioners and in case of default by the Assistant Commissioners, the Board could assume the powers and duties of the Assistant Commissioners and even exercise the powers of the Assistant Commissioners in case one was not appointed. However, the powers of the Assistant Commissioners could not extend to listed temples.[15]

In the beginning eleven Assistant Commissioners were appointed[16] and later the number was increased to fourteen.[17]

The Presidency of Madras was divided into fourteen divisions, each in charge of one Assistant Commissioner. They were given necessary instructions to carry out their duties and their staff was fixed. Each Assistant Commissioner had one Head clerk who was First Division clerk and he was to be in charge of the office. There were 4 to 5 Second Division clerks. They were Inspectors under the Assistant Commissioners.

Third Reorganization : 1944

There was a minor reorganization of the Head Office of the HRE Board owing to passing of the Madras Act V of 1944. The amendment increased the work and responsibilities of the HRE Board. To cope with this, a few more posts were created and the additional work was allocated among new staff. The Manager

14. *Fort St. George Gazette, Madras,* dated 7—3—1944, Part IV-B, pp. 33-34.
15. *G.O. 1628,* P.H., dated 28—5—1946.
16. *G.O. 1061,* P.H., dated 15—4—1944.
17. *G.O. 2696,* P.H., dated 28—9—1944.

was designated as Deputy Secretary and he was to co-ordinate and centralize the various administrative sections. The Deputy Secretary and the Senior Superintendent were responsible for the work of all the administrative sections and "concentrate on all important aspects of Temple administration which have, owing to lack of men, not received, till now the necessary attention."[18].

After 1944 there were a few minor proposals relating to reorganization, and hence the machinery remained unaltered till 1951. In that year, the Madras Hindu Religious and Charitable Endowments Act was passed. It repealed the Act II of 1927, and substituted the Board type of management by a departmental type for the 'better management' of the religious and charitable endowments.

Some of the reasons for the alsolition of the HRE Board can be found in the HRE Act itself.

According to Section 10 of the Act II of 1927, the HRE Board could be constituted, varied and abolished by the Local Government. The vesting of such vast powers in the Local Government, i.e., not only creating but also abolishing the Board, naturally denied it the essentials of an autonomous agency. This was responsible for the attitude on the part of the HRE Board to subordinate itself to its 'creator'. This attitude was sure to lead to its extinction which occurred in 1951. Better alternative would have been to leave abolition of the Board to the Legislature, this would have given it a sense of independence—a necessary quality of an independent agency, viz., a Board.

Secondly, the Commissioners and the President were to be appointed by the Local Government and also were to be removed by them. If an agency was to be a board type, i.e., an autonomous agency, the power of appointing and dismissing the members of the agency is rarely given to the Executive. At least the power of dismissal and removal should have been given to the Legislature. It was due to this, that the Board of Commis-

18. *G.O. 1719*, P.H., dated 19—4—1944.

sioners could never develop an independent or autonomous stature but always considered themselves to be the 'creature' of the Executive. This resulted in weakening the position of the Board and finally making it a mere department of the Local Government.

The various proposals of reorganization were necessary because the administrative functions of the HRE Board were increasing and before long it ceased to be a mere supervisory body but became an administrative and managerial agency as well.

How the HRE Board worked

The HRE Board operated for just over twentyfive years. It was established in 1925 and was abolished in 1951. This was the first central machinery with vast powers set up for the supervision of certain religious endowments in the Presidency of Madras. As indicated in the Preamble, it came into being since it was felt, "expedient to provide for the better governance and administration of certain religious endowments"[19] To achieve this aim, it was vested with vast powers of 'general superintendence'.

When the HRE Board took over the responsibility of super vision of the religious enowments, the general condition of these endowments was far from satisfactory. After the Government withdrew its control over them in 1842, their lot deteriorated and much damage had been done by the time the Act XX of 1863 was enacted. Even this Act failed to provide the needed protection to the religious endowments. And since the trustees, according to the HRE Board's reports, were 'mostly unscrupulous'. the affairs of the religious endowments were badly damaged. Proper accounts of receipts and expenditure were seldom maintained and the surplus money was not properly invested, but lent out without proper securities. Temple lands were often leased out in favour of relatives and friends of trustees, sometimes to 'co-trustees' on terms ruinous to the temples. Loans, interest and rents were mostly irrecoverable. Besides, alienation of temple

19. *Fort St. George Gazette, Madras,* dated 10—8—1926, Part IV, p. 182.

properties on inadequate grounds were very common. In case of temples which ha d mre than one trustee factions were common, with the result, that the interests of the temples were adversely affected and neglected. Even the Temple Committees which were constituted under the Act XX of 1863 were weak agencies because they were always torn asunder owing to local funds, quarrels and jealousies. Service *inam* lands were alienated or resumed by the Local Government and some temples fell into ruin and the performance of *puja* (religious services) ceased. It was necessary to safe-guard the temples and the HRE Board was entrusted with this responsibility.

The first undertaking of the Board according to the provisions of the Act was to compile a list of religious endowments. This was absolutely necessary since the lists which were existing were neither exhaustive nor up-to-date. The sources of information in this field were the District Collectors, Temple Committees and the Board's own inspectoral staff. During the first year of its administration, the Board found that there were 399 *maths*, 9,360 *temples* and 557 minor religious institutions whose income was below Rs. 250/- per annum.[20] According to the census of these institutions in 1951, the year in which the HRE Board was dissolved there were:

Major Institutions	Minor Institutions
263 *maths* and	87 *maths*
13,145 temples	15,242 temples ,,[21]
13,508	15,329

The census-taking was a continuous process since there were always institutions coming up and others falling out of the scope of the Act for various reasons. They would either be declared as 'private institution' by the Board or the Court, or their income would fall below the ceiling fixed by the Act for its application.

20. *First Administration Report of the HRE Board, Madras*, 1925-26, p. 41.

21. *Notes to G.O. 248, Legal*, dated 19—11—1951.

Another function of the Board was to obtain from the trustees under Section 34 of the Act, a register detailing the particulars about the properties belonging to the institution, names of the past and present trustees, the nature of administration, details of the staff employed, scale of expenditure and customary usages and practices obtaining in the institution. Early in May, 1925, the Board despatched a memorandum No. 105, dated 2nd May, 1925, to the trustees of the religious institutions who were required to give information in the form laid down in the memorandum. In 1925 these memoranda were despatched to 13,144 temples and 425 *maths* and replies from 1413 temples and 38 *maths* were received.[22] The Board was engaged in the work till the end of its existence. By 1951 the major portion of this was completed and the posts of special Inspectors created for this purpose were abolished.[23]

As the investigation was being conducted, the Board was also exercising general superintendence under Section 18 over large number of religious institutions.

The Board's first concern was to prevent the alienation of *inams* or their resumption by the Government. These *inams* were 'gifts' in the shape of lands or service to temples or other religious institution by private persons or the Government. It was the duty of the trustee to look after the *inams* in the interest of the beneficiency. However, "in hundreds of cases inamdars in possession of service inams attached to temples have ceased to perform their services and inam lands have been alieneted and resumed by Government. In many instances Inamdars have deliberately coveted resumption of the inams by a wanton neglect of the services with a view to get the lands assigned to them on ryotwari patta".[24] The Board issued a circular to the Presidents of the various Temple Committees and its inspectoral staff, requiring them to report on the real state of the *inams*. On the receipt of this

22. *First Administration Report of the HRE Board, Madras* 1925–26, p. 11.

23. *Twentysixth Administration Report of the HRE Board, Madras* 1950–51, p. 5.

24. *First Administration Report of the HRE Board, Madras* 1925–26, p. 13.

information during the first year of its administration the Board took action in 27 cases in the following manner. Where alienation was taking place the trustees and *inamdars* were asked to prevent it; and where resumption was occurring, the Revenue authorities were asked to grant time to the trustees to set matters right, and finally to assign the assesment for the the benefit of the temples when orders of resumption had already been passed. The Board thus carried to some extent succeeded in protecting and reclaiming the lost property of the religious institutions.

Another responsibility of the HRE Board was to take note of and enquire into the cases of mismanagement either on its own initiative based on the information supplied to it through its inspectoral staff, or on the initiative of the persons interested in the endowment. In this respect, the Board's action fell under the following four categories.

1. In case of institutions which had hereditary trustees, the Board was empowered to appoint interim trustees under Section 48. During the year 1925–1926 alone, the HRE Board appointed interim trustees to 101 institutions.

2. In some cases the Board settled schemes for the proper administration of the endowments under Section 53 and 59. During 1925–1926 in as many as 87 cases, the schemes of management were settled by the Board.

3. In other cases the Board granted sanction under Section 69 to the persons 'interested' in the endowment to institute suits in the Court to obtain decrees for appointing or removing trustees of the *maths* or excepted temples.

4. The Board also issued administrative orders for the appointment of new trustees where none were working, and instructions to Temple Committees to fill up vacancies in the number of trustees, It directed the trustees to maintain correct accounts etc. In order to remove mismanagement and effectively superintend the religious institutions, the Board was obliged to carry out functions of an executive and administrative nature as well,

The Board issued administrative orders not only to the trustees whose institutions were mismanaged but also to the Temple Committees. Here the HRE Board was aiming at better maintenance of the religious institutions. The orders related to 'general upkeep of the temples, repair, renovation and maintenance, audit of accounts, allocation of income, investment of funds, recovery of temple lands, separation of *archakaship*[25] from the trusteeship, auction of temple lands to the highest bidder, advice regarding the prevention of imprudent transaction, conduct of temple affairs during extraordinary occasions and appointment of trustees.[26]

The Board did not merely call upon the Temple Committees and the trustees to administer the affairs of the religious endowments better, but also on many occasions it directly intervened in their administration so as to help augment the income of these endowments. It intervened to settle a scheme for better management or to auction the lease of land or its properties. During 1925–1926, the HRE Board interfered in the administration of 10 temples and the income of these temples increased, "in one case more than 500 percent and in six cases about 50 percent or more."[27] Another method the Board adopted to increase the income of the rellgious institutions was the introduction of *hundials.* To supervise the collection of *hundials*[28] it appointed Special Officers. The result of this positive action on the part of the Board was an increase in the income of the religious institutions. The increase justified and even encouraged the Board's intervention in the administration of the affairs of the religious institutions to realise "the immense possibilities for good, that are potent in the new machinery for supervising religious endowments".[29]

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25. *Archaka* : priest.
Archakaship : priestly functions.

26. *First Administration Report of the HRE Board, Madras* 1925–26, p. 56.

27. *Ibid.* p. 9.

28. *Vide Fourth Administration Report of HRE Board, Madras* 1928–29, p. 15.

29. *First Administration Report of the HRE Board, Madras* 1925–26, p. 9.

The Board was assuming new responsibilities in other spheres too. The Temple Committees were fast becoming defunct and the Board was authorised to undertake the functions of the defunct Temple Committees. It soon came to possess powers of direct supervision over non-excepted temples, though it was the mismanagement in the temples which necessitated the Board's frequent intervention.

The trend towards the assumtion of greater responsibilities on the part of the Board received an impetus with the amending Act XI of 1934. Hitherto the Board could only frame a scheme of management for mismanaged temples, but by this amendment, it also received the power of notifying the mismanaged temples and appointing executive officers to manage their affairs. The executive Officer was given the duties of a managing trustee. During 1935-36, the Board started enquiries in 36 cases and decided in six cases that these temples should be notified and four of these temples were actually notified. By 1948 as many as 120 temples and one specific endowment were notified,[30] and by 1957, over 133 temples had been notified.[31]

Besides the Executive Officers, Assistant Commissioners were also made to act as interim trustees. A general order was issued in 1936 to the effect that, "the Government have no objection to the appointing by the HRE Board of the Assistant Commissioners as Interim trustees or Executive or Managers, etc. of the temples under the Board......"[32] However, the Assistant Commissioners' pay was to be paid out of the Board's fund, and only the travelling allowance for the expenses incurred in carrying out the duties of Interim trustees, was to be paid out of the funds of the religious institution concerned.

Another important function of the Board was to scrutinize the budget of the excepted temples. This budgetary control greatly increased the Board's powers. The Board was empowered to make alteration, omissions in the budget, keeping in mind the

30. *G.O.* 58 F.D., dated 9—2—1948.

31. *Twentysixth Administration Report of the HRE Board, Madras,* 1950–51.

32. *G.O. 1316*, P.H., dated 29—4—1946.

necessary and due expenses as required by customs, usages of the temples and *maths*, etc. It was this power which was mainly responsible for the unpopularity of the Board. During its first year of administration, out of 1128 institutions to which the memoranda for submission of budget were sent, only 34 institutions responded; while during the last year of its administration, the budget of only 1222 institutions out of 13408 were received. However, the Board continued to tighten its supervision over the budget of the religious institutions. This budgetary control gave the Board, control over the performance of rituals, indeed an integral part of religious affairs.

The HRE Act gave the powers of beneficial trustee to the HRE Board. It was empowered to direct the surplus funds of religious endowments. The provision for *Cy pres* application was contained in Section 67 of the Act which laid down that the Board could declare that a religious endowment had a surplus which was not required for rhe endowment and by order, direct that this surplus should be appropriated to religious, educational and charitable purposes, "not inconsistent with the object of such religious endowment".[33] It was under this provision that the Board passed orders in specific cases on the application made to it, for the payment of contribution from the surplus funds of temples to institutions imparting secular education. Thus, the Guruvayur Temple in Malabar was permitted to make an annual payment of Rs. 5,000/- to the Zamorin College at Calicut where non-Hindu students were also admitted. The Sri Venkateshwara University is financed out of the surplus funds of the Tirumalai Tirupati Devasthanam, the proposals for which were submitted during 1927–28.[34] In 1940, there was a proposal to divert the surplus of certain temples for leprosy relief in the province of Madras. Requesting this aid, the Advisor to the Governor, wrote to the Secretary, Education and Public Health, "I want to squeeze, if possible, Rs. 5,000/- out of the larger temples and devasthanam for the local branch of the British Empire Leprosy Relief Association.

33. *Fort St. George Gazette, Madras*, dated 8—2—1927, Part IV, pp. 16–49.

34. *Third Administration Report of the HRE Board, Madras*, 1927–28, p. 31.

Perhaps we could get the HRE Board to issue definite instructions to the Executive Officers to make the grant from temple funds, if that is quite legal." [35] This type of diversion of funds was not rare since it was an established practice in the olden days for temples to feed the sick of the locality, and the temples used to run 'Pathasalas' as well.

From a study of the administration of the HRE Board, one notices that the Board adopted a pollicy of positive and more frequent intervention in the administration of the religious endowments, rather than merely intervening on the receipt of appeals for the purpose.

The various instructions issued by the Board under Section 18 demonstrated active supervision. The Board acted on its own initiative more often than it did on the petition from 'interested' persons. However, this active supervision became necessary since Temple Committees had become feeble bodies, made more ineffective by the disobedient and powerful trustees on one hand and the powerful Board on the other. Some of this active interference could have been avoided since the Temple Committees were already empowered to remove the non-hereditary trustees and the Board, could take action against trustees. This would have checked corruption and offered a better alternative to that of taking over the administration of a religious endowment.

The English parallel however presents a contrast. The English Charity Commissioners were vested with vast powers of supervision under Section 9 [36] of the Act of 1853, yet the Charity Commissioners refrained from directly interfering in the administration of the trusts. The Nathan Committee Report observes, "with this section behind them, it has always been open to the Commissioners and the Ministry to adopt a policy of positive and frequent intervention in the administration of trusts or a policy of intervening only when something serious is brought to light. In the event they adopted the latter course. From the evidence given by the

35. *Notes to G.O. 2306*, Ed. & P.H., dated 29—5—1940.

36. *Report of the Committee on the Law and Practice relating to Charitable Trusts*, p. 45.

Chief Commissioner and by Legal Advisor to the Ministry of Education it is clear that the section has not been interpreted as requiring them to maintain supervision of trusts with a view to making them of 'maximum benefit to the community' by suggesting, for example, alternative ways of laying out the funds within the existing scope of the trust, or improvements in administrative techniques...... Thus when a controlling authority intervenes on its own initiative it is normally for a negative purpose to put a stop to any defalcation, breach of trust, or serious inefficiency when brought to their notice either through the accounts or by a member of the public."[37]

The net result of the 'positive policy' adopted by the HRE Board was that the supervisory machinery of the Board, before long, became the managerial body. Various factors however, contributed to the adoption of this policy by the Board. To some extent, the attitude of the people towards the Board encouraged this policy. They expected the Board not only to take note of the cases of mismanagement and set them right, but also to manage the endowments, no doubt preferring the Board's management to that of the local trustees. The people thus appreciated central action in every field to that of local initiative and action.

Further, the Temple Committees had as previously mentioned become enfeebled, sandwiched as they were between the powerful trustees and the HRE Board. They were before long pushed aside and affairs of the non-excepted temples came to be managed by the HRE Board through their agents, the Assistant Commissioners. The Committees appear to have submitted rather meekly to this erosion of their powers without any protest against the establishment of a centralized authority in their place. The natural consequence of this was a deadening of local initiative; the local committees failed to produce a sense of local responsibility or provide local men competent and eager to manage even such familiar and intimate affairs as those of religious endowments.

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37. *Report of the Cammittee on the Law and Practice relating to Charitable Trusts*, pp. 45–46.

CHAPTER VII

THE MACHINERY OF SUPERVISION UNDER THE ACT OF 1927

(b) *Temple Committees*

The Bill 12 of 1922 envisaged just one agency for supervision, the Temple Committees. The Select Committee on the Bill introduced one more agency the Board of Commissioners for the HRE, as a central organization. The Act I of 1925 accordingly established two agencies for supervision of religious endowments : the Board of Commissioners for Hindu Religious Endowments and the Temple Committees.

Both the Board and the Temple Committees were independent agencies. Both were corporate bodies, to be created, varied and abolished by the Local Government. It was stated in the Act that the Temple Committees were "a body corporate and shall have perpetual succession and a common seal and shall, by said name, sue and be sued.[1]

The powers of the Local Government and the Board, though few, were important. The Local Government under Section 20 could create, vary and abolish the Temple Committees on the recommendation of the HRE Board. And as long as the provisions relating to the Temple Committees remained on the Statute book, the Local Government never exercised this prepagative. It also had the power of fixing the strength of the Temple Committees, again to be exercised on the recommendation of the HRE Board. When the first committees were being constituted, the Commissioners toured their respective fields to study the working and the failure of the Temple Committees which were constituted under the Act XX of 1863. Based on this study they formulated certain principles for the constitution of the new Temple

1. *Madras Act I of 1925, vide Acts passed by the Local Legislature of Madras,* 1925, p. 11.

Vacancies were to be filled by election, failing which the Local Government had the power to appoint a member to it (Section 26).

The Temple Committees were vested with numerous powers of supervisory. administrative, inquisitorial, judicial, financial and legislative nature. The supervisory powers vested in the Temple Committees by Section 31, required them to exercise powers of general superintendence over all the non-excepted temples under their jurisdiction. The Committee had the administrative powers of appointment, suspension and removal etc. of non-hereditary trustees (Section 51 and 53). The Committee could determine the number, designation, grades, scales of salary, etc. of its own employees (Section 29). The resolutions of the Committee were to be implemented by its President in whom were vested all the executive powers. The Committee had the power to sanction the budgets, *dittam* of expenditure of the temples under it (Sections 55 and 56). It inquired into cases of mismanagement of endowments and the properties of the temples and prepared registers (Section 57). It also had the judicial powers. It heard appeals from temple servants against the orders of the trustees, and also appeals from trustees (Section 43 and 53). It had *quasi* legislative powers of making rules, regulations and by-laws not inconsistent with the Act. Matters on which the Temple Committee could legislate were the time, place, quorum of meeting, division of duties etc.; (Section 32). It had the power to collect contribution at 1½ percent of the annual income of temples under its control.

The first function of the HRE Board was to organise and constitute the Temple Committees. After the Commissioners had toured the areas, the HRE Board decided upon two courses of action, viz. (a) to abolish some old committees and constitute new ones with adequate strength, resources, etc. and modify others, and (b) to place non-excepted temples under their supervision. To implement this decision, the HRE Board made certain recommendations, based on the following principles :

1. That as a rule, number of committees in a district could range from 1 to 3.

2. The strength of the Temple committees could be between 9 and 12.

3. That the number and the strength could be determined with due regard to the number and importance of temples to be put in its charge and extent of jurisdiction and funds by way of contributions that might be available.

According to these principles the Temple Committees were formed and appointments were made by the Local Government "on the recommendation of the HRE Board".[5] Some of the old Committees were re-organized. And thus thirty-two committees were formed. The term of office of these Committees was one year.

Their Organisation and Functioning

These Committees were organized partly *on* territorial and partly on the clientele basis. The jurisdiction of a Committee extended to a revenue district. But, only non-excepted temples were under its jurisdiction. Each Temple Committee had a small administrative staff whose strength varied from Committee to Committee. It usually consisted of:

1. Clerk — One
2. Attendant — One
3. Inspecting officer — Two
4. Amin — Two

At times there would be a manager as well.

Their preliminary work was to prepare for themselves and for the HRE Board registers of endowments, This being a prevailing practice the Temple Committees had begun to compile them. Their next important assignment was to get information on the income of the temples and send demand notices to them. They had also to appoint trustees to various temples where vacancies had occurred and every year a Temple Committee appointed a few trustees to one temple or other. They were requi-

5. *G.O. 489, L. & M.* dated 2—2—1926.

red to submit administrative reports to the HRE Board. It was through this that the Board exercised effective control over them as it could, through the administration reports, study the activities of the Temple Committees.

An important preliminary function which the Temple Committees failed to carry out during their first year of administration was the compilation of the electoral rolls. The result was that the term of twenty-three out of the thirty-two Temple Committees expired. Before election to fill there could be held the Presidents of Kumbakonam Circle Temple Committee and Trichinopoly Circle Temple Committee informed the President of the HRE Board that there was no time for them to acquaint themselves with the records, history and customs of the temples, make plans and implement policies and also hold elections. They requested that the "Government may be pleased to amend Section 22 of the Madras HRE Act II of 1927 so as to extend the term of the office of the present nominated members of all the new Committees.........to a period of five years and do away with the unique anomaly of giving only one year for the present nominated members but expecting them to achieve all the benefits and purposes incidental to giving the reasonable and usually prescribed period of five years......".[6] Many Temple Committees also expressed their inability to meet the election expenses. It was accordingly felt necessary to amend the Act II of 1927. The Madras (Amendment) Act I of 1928 added a proviso to the Section 22 of the principal Act. Under Section 20 the Local Government could constitute, vary and abolish the Temple Committees; under Section 22 they could nominate a member to a Temple Committee for one year and by the new Proviso to Section 22, the Local Government could extend the term of the nominated members to another year. The newly constituted Committees consequently functioned for two years.

At the end of the period of extension the Committees still were not ready with thetr electoral rolls and continued to complain about the lack of finances to meet the election expenses. By 1930, only four Committees could be constituted by elections,

6. *G.O. 3992, L. & M.* dated 15—10—1927.

the Tanjore, Nagapatam, Tinnevelly and Tuticorin Circle Committees. To solve this difficulty the Local Government under Section 20 abolished the Committees whose term had expired, and constituted new ones under Section 22 for a year, and when that term was over, extended their period by another year under the proviso to Section 22. At this action by the Local Government objection was raised with reference to the High Court Judgement in A.S. No. 191 of 1930, as to whether such reconstitution of Temple committees by nomination was legal. The Advocate-General was asked to give his opinion on the case....... "A Committee was constituted by the Government by nomination for the District A. After one year that Committee was abolished and a new Committee for the same area was constituted by nomination. Is it open to the Government again to abolish the said Committee and constitute for the third time a Committee for the above district by nomination?".[7] To this the Advocate-General replied: "It is not open to the Local Government to exercise any power of appointment or to direct that the members of a committee should continue in office for any further period after the terms referred to the Section 22 and the proviso have expired...... It would not be open to Government to purport to abolish a Committee the term of whose members has expired under the operation of Section 22 and its proviso, and thereby to invoke the power contained in the Section......the terms of Section 22 read with the proviso make it quite clear that the power in the Section is not an indefinite or continuing one......".[8] As soon as this ruling was given, there was a marked decline in the number of the Temple Committees and at once thirty-one Temple Committees became defunct and the HRE Board reported to the Government that "all Temple Committees, excepting the elected Committees ......ceased to function either in the early part or about the middle of the fasli under report"[9] i.e., (1930–31). These elected Committees were: 1. Tanjore, 2. Negapatam, 3. Tinnevelly, 4. Tuticorin, 5. South Arcot. This decision resulted in preventing

7. *G.O. 1070, L. & M.* dated 21—3—1932.

8. *Ibid.*

9. *G.O. 200, L. & M.* dated 18—1—1932.

the Local Government from misusing the powers invested in them under Sections 20 and 22 and its proviso.

The HRE Board assumed the responsibilities of the defunct Temple Committees. though this was by nomeans the first occassion when it had done so. In 1927–1928, when "almost all the Committees in the Northern Circars did not function for nearly three-quarters of the period...... the Board had to step into the place of the Committees in exercising some kind of supervision over the non-excepted temples in the areas concerned."[10] In 1931, the function of thirty-one Temple Committees was undertaken. The principal Act was amended by Madras Act XI of 1931 to authorise the HRE Board to carry on the functions of Temple Committees which have not been constituted or do not exist."[11]

To carry out the functions of the defunct Temple Committees the HRE Board appointed extra staff under the authority vested in them by Section 17 and 33 of the Act. However, the Board also failed to carry out the function of holding elections. The lack of finances was once again stated as the reason for this omission! Also there was no great interest on the part of the people to organize and elect the Temple Committees. The Temple Committees therefore continued to remain defunct till they were abolished altogether.

The assumption of the responsibilities of the defunct Temple Committees had an adverse effect on the administration of the HRE Board. At the time of the passing of the Act XI of 1931, it was believed that the period of interregnum, when the HRE Board would be in charge of the affairs, of the committees would be short—"a few days, probably some months"[12] as the Hon'ble Mr. B. Muniswami Nayadu stated on the floor of the House. But as it extented to several years, the HRE Board went on increasing

10. *G.O. 726, L. & M.* dated 11—2—1929.

11. *G.O. 200, L. & M.* dated 18—1—1932.

12. *Proceedings of the Madras Legislative Council, Madras,* dated 3—8—1931, p. 57.

its staff, both at the Head Office and at the *mofussil.* At first the increase of the personnel was not noteworthy, though after Mr. Kondappa became the President of the HRE Board in 1935 it became quite marked. The following figures will give an idea of the amounts which were spent from the year 1935 onwards on the establishment appointed to carry on the Committees' work.[13]

Year	Establishment charges	Increase on percentage every year
	Rs.	
1936	28,984	...
1937	48,899	41%
1938	55,308	93%
1939	62,900	117%
1940	72,500	148%

While the expenditure was increasing, the income which the HRE Board earned on behalf of the defunct Temple Committees under Section 69, was comparatively negligible. The following figures will show the income earned and expenditure incurred by the HRE Board from 1937 onwards.[14]

Year	Income			Expenditure		
	Rs.	As.	Ps.	Rs.	As.	Ps.
1937	78,480	4	10	88,474	8	7
1938	74,264	10	8	1,37,390	13	8
1939	71,492	10	3	94,981	14	6

13. *Figures quoted from the G.O. 1878, P.H.,* dated 5—5—1941,

14. *Ibid.*

There was not only an increase in staff and expenditure but also in the volume of work done. So long as the Temple Committees remained corporate bodies the HRE Board had to send separate demands and requisition for contributions due to it (1) as the Board and (2) in its role as the representative of the Temple Committees. This increased the number of demands and requisitions to be sent to the institutions and with it the clerical work both at the Head Office and in the mofussil. The maintenance of separate accounts, that of the HRE Board and of the Temple Committees, complicated the accounting considerably.

As a result of inflated expenditure, increased staff and work, the administration of the HRE Board soon reached the point of breakdown. The Local Government appointed a Special officer, Diwan Bahadur R. V. Krishna Iyyer, "to assist the new HRE Board in placing its administrative machinery on a sound and economical basis."[15] After studying the working of the Board, the Special Officer observed "It seems to me that the continuance of the defunct Committees only gives rise to avoidable ministerial work in the office of the Board, complicates accounting and serves no useful purpose. There seems to be no possibility of the Committees coming back into existence. The Committees have always been subject to the control and superintendence of the Board and they never had much of independent initiative. In these circumstances they can all be abolished and no harm will occur."[16] It was this recommendation that led to the final abolition of the Temple Committees.

The history of administration by the Temple Committees brings out certain important trends. The number of the Temple Committees in operation, fluctuated from year to year. The following statement collected from the annual administration reports of the HRE Board indicates this:

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15. *G.O. 3976, R.H.* dated 29—8—1940.

16. *G.O. 1878, P.H.* dated 5—5—1941.

Year	Number of Temple Committees functioning	
1925–26	32	
1926–27	38	
1927–28	44	
1928–29	36	
1929–30	36	
1930–31	5	(31 Temple Committees became defunct)
1931–32	7	
1932–33	7	
1933–34	7	
1934–35	10	
1935–36	10	
1936–37	8	
1937–38	9	
1938–39	7	
1939–40	5	
1940–41	5	

Between 1939 and 1944, the year of their abolition, only five Temple Committees existed. So long as the members could be nominated to the Temple Committees by the Local Government, they continued to operate. When that practice was discouraged owing to the objection taken by the High Court of Judicature in 1931, their numbers continued to decrease till they were abolished in 1944 by the Madras Act (Amendment) V of 1944. The democratic process advocated by the constitution of the Temple Committees could not take root or survive long, partly because of the powerful HRE Board and the trustees on one hand and the attitude of the Temple Committee personnel and the indifference of the people on the other.

17. *G.O. 1070, 2 + M* dated 21—3—1932.

Some of the important functions which the Temple Committees carried out were the preparation of lists of temples and the endowments under their jurisdiction, sending of the demand notes, sanctioning of the budgets and *dittam* of expenditure of temples, appointment of trustees, auditing of accounts and finally supervision of the working of the temples and their endowments. The review of the first set of administration reports, which were submitted by the Temple Committees indicate that in twelve out of nineteen temples the discharge of their functions was satisfactory, since one finds remarks such as these "best", "creditable", "fairly well", "good", etc. made in the reports.

The difficulties which the Temple Committees had to face were mainly due to the lack of adequate funds. The Temple Committees' source of income was the levy of 1½ percent on the income of the non-excepted temples as 'contribution'. Though the demand statements were sent every year, most of the Temple Committees could never recover the amount they had budgetted for. The failure to collect the dues was due to three reasons:

1. Trustees of non-excepted temples had to pay a double contribution — 1½ percent of the income to the Temple Committees and another 1½% to the HRE Board; whereas the trustees of the excepted temples and the *maths*, who were ordinarily richer and better off, paid only 1½ percent of their income to the HRE Board. The trustees of the non-excepted temple therefore felt that they were being unfairly treated, compared with their counterparts who were 'richer'.

Most of these trustees also adopted a hostile attitude towards the Temple Committees which, they considered to be unnecessarily superimposed on them.

The means adopted by of the Temple Committees for collecting their dues were ineffestive though, this was remedied to a certain extent by the Madras Act XI of 1931 which authorised the Collectors of the districts to collect the arrears as arrears of land revenue. °Even this was not enough for, the budget of the Temple Committees continued to show a deficit till their abolition,

The non-co-operative attitude of the trustees contributed further to their ineffectuality. One of the functions of the Temple Committees was to sanction the budget of the temples. The trustees of most of the temples never sent their budgets to the Temple Committees. We can see the lack of response to those five Temple Committees which survived to the end received from the following table.[18]

Name of the Temple Committee	No. of temples under its jurisdiction	No. of budgets received
1. South Arcot Temple Committee	383	28
2. Tanjore	393	70
3. Kumbakonam	323	42
4. Nagapatnam	351	62
5. Tuticorin	170	84

Another function of the Temple Committees was to get the accounts of the temples and Committees audited. Owing to lack of finance, most of the Temple Committees could not get this done. This difficulty was to a certain extent metigated by the Madras Act (Amendment) XII of 1935. By this Act the audit charges for the auditing of the accounts of the temples were required to be paid from the funds of the temples.

Further more the Temple Committees were expected to exercise tgeneral superintendence over non-excepted temples. To carry out his function, every Committee had employed inspecting officers and the Trichinopoly Temple Circle Committee had a special officer, whose duty, besides inspecting, was to bring all the non-excepted temples under the jurisdiction of the Committee and detect cases of alienation. However, this function of the Temple Committees often clashed with the similar function of the HRE Board invested in it under Section 18. The Act, invested in both, the powers of general superintendence but left the boundaries vague.

18. *Tenth Administration Report of the HRE Board 1934–1933*, p. 14–20.

When the Tanjore Circle Temple Committee appointed a Tengalai trustee to a temple under its jurisdiction, the Divisional Commissioner in his inspection notes objected that the Temple Committee did not pay heed to the direction of the HRE Board. With reference to this remark, the President of the Tanjore Temple Committee pointed out that 1. the Board under the HRE Act had no power to issue directive to the Temple Committee; 2. that the latter was an independent unit; 3. that it (HRE Board) had no power of revision over the orders of the Committee appointing a trustee; 4. that the Act did not lay down that the Temple Committee should obey all the directions issued to it by the HRE Board. To this the Government replied that "the HRE Board proceeded in taking the action it did, under the general powers conferred by Section 18 of the HRE Act, 1926.........."[19] Despite this ruling the problem of the conflict of jurisdictions continued. The HRE Board finally complained to the Local Government that they could not achieve greater success in administration "for want of clear powers of revision over such actions of Temple Committees as are found to be detrimental to the interest of the temples concerned."[20] As a result the HRE Board come to be armed with definite powers of supervision of the Temple Committees' functions.

The HRE Board shortly thereafter began to interfere directly in the working of the Temple Committees. On a petition from 'an interested person' stating that the affairs of the Kumbakonam Temple Committee were being mismanaged, the Divisional Commissioner of the HRE Board was asked to enquire into the allegations. He found that they were not without substance and that the Temple Committee had been using up the Temple funds under the pretext of 'investing' them as also incurring expenditure beyond its income. At this, the Local Government passed the order that "the Board should see that its directions are obeyed by the Committee and that irregularities cease. The Board should examine the expenditure of the Committee and suggest ways of

19. *G.O. 3380, L. & M.* dated 3—9—1927.

20. *G.O. 5736, L. & M.* dated 20—12—1929.

retrenchment."[21] The HRE Board now began not only to supervise but also to control the actions of the Temple Committees, which were thus reduced to the position of a mere field office of the HRE Board.

Though most of the Temple Committees were gradually being relegated to a subordinate position, some of them did raise objection when the HRE Board's action interfered with their administrative powers, as when the Board was informed of the mismanagement in the Arunachaleswarar, Ranganatha Perumal and Theagarajeswarar temples under the Negapatam Temple Committee. On the report from its Inspector, the HRE Board drew a scheme of management under Section 57 and appointed new trustees. The Board later received a complaint against their trustees and asked the Temple Committee to investigate the matter. The President of the Negapatam Temple Committee found the allegations true and dismissed the trustees under Section 53. These trustees later appealed to the HRE Board that since they were appointed by the Board, the Temple Committee had no power to dismiss them. The Board examined the case and decided that the Committee had no power to dismiss the trustees and cancelled the suspension order. The President of the Negapatam Temple Committee appealed to the Local Government questioning the propriety of the order of the Board. It contended that the Board had asked it to act under Section 53, and later could not take away the Committee's powers as invested in it under Section 53. The HRE Board contended that under Section 57(1) (c) of the Act it could itself assume the power to appoint trustees and secondly that with reference to a decision[22] of the Privy Council the authority

21. *G.O. 1046, Ed. & P.H.* dated 21—3—1942.

22. Reference here is to the R. T. Rangachari–vs The Secretary of State for India-in-Council case which deals with the Government of India Act of 1919. It was held where a Sub-inspector of Police who was appointed by the Inspector-General of Police was dismissed by the Deputy Inspector General of Police, "the purported dismissal having emanated from an official lower in rank than the Inspector-General of Police who appointed the Sub-inspector was invalid and inoperative and that the dismissal could not be supported on the grand of delegation of powers" vide

which made the appointment was the only authority competent to remove the person appointed. Accordingly it held that the Committee while it could only enquire into the matter was not entitled to take action under Section 53. The Government however upheld the contention of the Temple Committee and gave the following ruling: "...........Section 53 of the Act is quite general and applies to all trustees of non-excepted temples including those appointed under a scheme framed by the HRE Board in pursuance of Section 57...........The Privy Council decision........... was based on specific provisions in the old Government of India Act of 1919 laying down that, Government Officers should not be removed from office by an authority subordinate to that by which they were appointed and hence it cannot apply to a case governed by the HRE Act of 1926.........The action of the Board in cancelling the dismissal order of the trustees by the Committee is therefore not in order." [28]

This instance brings out a typical case of encroachment on the part of the central authority over the local authority. The protest by the Negapatam Temple Committee came rather late in the day and the HRE Board had already established its powers by the Madras Act IV of 1930, and the Temple Committees had already been reduced to the position of subordinate field station.

Often enough, the Temple Committees themselves invited such interference from the Local Government and the HRE Board. The members of the Temple Committees, according to the HRE Board, never worked with a single and united purpose. They were torn asunder by local feuds, cliques and power politics. This greatly decreased their bargaining capacity and the strength to hold its own, as an autonomous unit against the HRE Board.

(1937) 1 M.L.J. p. 515–Another case which deals with the same point but which is of special significance to the problem under study is *Parasurama Udayar–vs–A Vadagir Bhaskar Thirumal Rao & others.* In this case it was held that "the powers of appointment and dismissal of hereditary temple servants, who cannot be dismissed without sufficient cause such as grave misconduct, is not one of the powers of a trustee which are capable of being delegated to an agent" vide 41 M.L.J. (1921) p. 17.

23. *G.O. 744, Ed. & P.H.* dated 28—2—1939.

By the time Venkataramana Rao Commission was constituted to recommend proposals for the amendment of the principal Act, these Committees had become so ineffective that one of the important recommendations of the Commission was the abolition of the institution of the Temple Committee and substitution of the same by Assistant Commissioners. This recommendation was implemented by the Madras Act V of 1944 and the Temple Committees were abolished. In this way the only democratic institution in the whole framework of supervisory machinery was eliminated and the HRE administration became a highly centralised agency.

The failure of such institutions reveals the Indian way of thinking in this field. It brings out the attitudes of the Government, the HRE Board and the people towards the working of such autonomous bodies.

The Government of the day never had a clear idea of the status and working of an autonomous unit of administration. This is clear from one of the notes of the Local Government. When the first set of rules was being framed under the HRE Act I of 1925 and there was a proposal to give powers of approval and confirmation to the HRE Board of the rules made by the Temple Committees, one suggestion was that the Temple Committees should remain autonomous, independent and responsible bodies and that power of veto alone should be given to the HRE Board. To this the Local Government observed: "the Board is responsible to the Government for proper administration and it should therefore possess certain powers as provided in the rule; otherwise it cannot have an effective check over the work of the Committees......The object of the suggestion is to reduce the power of the Board over the Committee. It is not advisable ....that they should be accepted."[24] The Local Government from the beginning had the idea that the Temple Committees were subordinate to the HRE Board. It was this preconceived notion which encouraged the HRE Board to gradually increase

24. *Notes to G.O. 2934, L. & M.* dated 10—7—1926.

its powers of supervision, over the Committees and eventually destroy their autonomy altogether.

The HRE Board perhaps itself had no clear idea of an autonomous unit working along side of it, Rather, it presumed it to be a definitely subordinate body meant to carry out its directions. Thus, when the Negapatam Temple Committee resented the undue pressure and control of the HRE Board over its administration, the HRE Board replied: "the Board regrets to note that the tone of its (Committee) remarks is inappropriate in as much as they are made about a statutory body which is a supervisory authority entrusted with supervisory and controlling powers as will be seen from the provisions of Sections 18, 34, 35 and 35-A of the Act. The Committee's main criticism ... from which its other objections seem really to spring ... is that the Board is trying 'to fetter the hands of local committees in exercising the powers assigned to them by the Act, and to usurp the powers of the Committee by the Board rather than to improve the temples concerned'. This criticism is unwarranted and improper. The Board will address a separate communication to the Committee so as to bring home to it the misconception under which it is labouring..."[25] This confusion was mainly due to Section 18 of the Act which vested powers of general superintendence in the HRE Board over all Hindu religious endowments within the Presidency of Madras and Section 31 which vested similar powers in the Temple Committees over non-excepted temples within their respective jurisdiction.

A few other factors helped the HRE Board to increase its powers with respect to the Temple Committees and the hereditary trustees. The hereditary trustees had ceased to display characteristics of local leadership. Possibly this was due to the decay of the landowning class and its retreat from public life which may be held to be both the cause and the consequence of the general political and social evolution in modern India. The inability of the elective Temple Committees to attract the right type of local leaders led to electioneering and factionalism, transforming it to yet one more area for the

25. *Seventh Administration Report of the HRE Board 1931-32 p. 18 - see also G.O. 1626, L. & M.* dated 27—4—1933.

play of local politics. In the absence of reputable hereditary or elective leadership and acceptable standards, it is not surprising that the people preferred administration by an appointed official or civil servant, who at least could as the representative of the Government claim an aura of respectability sadly lacking in the others.

The passing away of the institution of Temple Committees was not mourned by the people. There were no protests no representations and no delegations waiting upon the Government to revive the venerable institution. The people of the day just were not 'autonomy minded'. They could not believe that an autonomous and independent body manned by their own representatives could function better than a bureaucratic, and business like executive. The absence of efficient leadership in the local areas was perhaps responsible for this attitude on the part of the people.

From this, to a certain extent, it is perhaps evident that democratic principles do not easily take root in our country. There is a growing disposition on the part of the people to welcome bureaucratic *take-over*. They (the people) seem to prefer management of the public affairs by a branch of the State Executive than by independent agencies animated by themselves.

CHAPTER VIII

PERSONNEL MANAGEMENT OF THE HRE BOARD

People who work in an organisation are instruments of management, and their effective administration is necessary for the success of an enterprise. The HRE Board had to face from time to time the problems relating to personnel management. A study of this aspect of the Board's management will show how important this matter was, because it affected the very existence of the Board.

The Board's personnel comprised of the President and Commissioners and the staff, the later belonging either to the head office or the *Mofussil.* The President had all the powers of managing the personnel of the Board.

Recruitment of President and the Commissioners was by *ad hoc* committees appointed whenever necessary. Sometimes the President was selected by the Local Government and with the help of the *ad hoc* committees. The late Sir T. Sadasiva Iyyer, the first President, was appointed directly by the Local Government and also his successors Messrs. Ranga Reddy and R. Surya Rao.

Otherwise the President and the Commissioners were invariably appointed from among the panels recommended by the *ad hoc* selection committees. The first set of Commissioners was appointed from the panel recommended by a Selection Committee established for the purpose[1] Sometimes this method was not adopted with regard to the appointment of the Commissioners. Thus, due to financial difficulties of the HRE Board, it was thought advantageous to appoint "an experienced Deputy Collector of active service, of Government who would devote all his attention

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1. *G.O. 321 L. & M.*, dated 27—1—1925.

to collection work "[2] and Mr. G. Padmagirisa Iyyer, Deputy Collector, Revenue Department was appointed as one of the Commissioners of the HRE Board.[3]

Qualifications for the President and the Commissioners were stipulated in the Act itself 1927. Both were to profess the Hindu religion. The President was to be:

"(a) A Barrister of England or Ireland or a member of the Faculty of Advocates of Scotland of not less than five years standing, or

(b) a person having held judicial office not inferior to that of a subordinate judge or a judge of a Small Cause Court, or

(c) a person who had been a pleader for a period of not less than 10 years."[4]

It was a convention that Commissioners should also be graduates in Law of some years standing. However, with regard to the qualification (a) for the President, it was often a matter of wonder how a barrister of England could be a better Commissioner for HRE than a good Hindu possessing a degree in Law.

The HRE Act had not stipulated any qualification with regard to the age of Presidents and Commissioners. However, the first Selection Committee laid down that "it is not desirable to have as Commissioner, a person who had been in government service and had to retire owing to his having passed the age limit."[5] Therefore, when the Selection Committee in 1935 recommended a panel of names of candidates who were on the eve of retirement, the Minister-in-charge of the HRE commented that "the Committee was technically in order but they have not

2. *Notes to G.O. 1193 L. & M.*, dated 22—3—1925.

3. *G.O. 2318 L. & M.*, dated 12—6—1955.

4. *Fort St. George Gazette, Madras*, dated 8—2—1927, Part IV, p. 16-49.

5. *Notes to G.O. 1145 L. & M.*, dated 3—3—1925.

carried out the intention of the Government. A man who is too old for Government service must be also considered to be so for the Endowment Board. It is the non-recognition of this principle that has lowered down the prestige and usefulness of the HRE Board. The work of the Board requires tact and energy and involves strenuous tourning and inspection if one is to discharge the responsibilities of the Office property."[6] This settled the qualifications in respect of age.

The President and Commissioners, though members of an independent agency, came to occupy positions similar to those of the government servants. When Mr. Kondappa, one of the Presidents of the HRE, evinced interest in the elections, the Government observed: "under sub-section (3) of Section 12, Section 14, and sub-section (1) of the Section 15 of the HRE Act, 1926, a Commissioner is appointed by the Government, his salary is fixed by the Government, and he is removable from office by the Government. He is required to devote his whole time and attention to the duties of his office, the power to relax this condition, being also vested only in the Government. It is therefore considered that for the purpose of election to the Legislatures, the Commissioners of HRE Board should be regarded as occupying the same position as a Government servant and that it is undesirable that he should take any part in the elections, beyond recording his vote."[7]

The adoption of this attitude was partly due to the fact that the Fnudamental Rules which applied to the Government servants in respect of leave, promotion, demotion, travelling allowanee etc. also applied to the President and the Commissioners.

Every Commissioner received out of the funds of the Board, such salary as the Local Government fixed, but not exceeding Rs. 1200/- per month for the president and Rs. 800/- per month for the Commissioners. The scale of the President's salary was never determined and he was paid Rs. 1200/- per month; however

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6. *Notes to GO. 1193 L. & M.*, dated 22—3—1935.

7. *G.O. 700 L. & M.*, dated 19—2—1937.

the scale of the pay of the Commissioner was fixed in the grade of Rs. 700-50-800.[8] Owing to precarious financial position of the HRE Board the salaries of the President and the Commissioners were altered several times. The first such revision by the Government occured in 1931, and the pay of the President and the Commissioners of the HRE Board was fixed in the following scale:

President	Rs. 900-50-1200
Commissioners	Rs. 600-50-800 [9]

In 1934 chronic financial difficuities led to a cut of five percent in the salaries of both the President and the Commissioners.[10] In 1940 the pay was again altered and reduced to the following scale:

President	Rs. 800-50-1000
Commissioner	Rs. 400-50-600 [11]

When the Board's financial position improved, the scale of the pay of these officers was again revised to reflect the prospering fortunes of the Board and the pay of the President was raised to Rs. 1000-50-1200 and that of the Commissioner to Rs. 500-50-700.[12] The scale of pay of the Commissioner was later raised to Rs. 600-50-800.[13] The travelling allowances corresponded to those paid to the Government servants[14] under the Madras Travelling Allowances Rules. The vissisitudes of the HRE Board thus affected the fortunes of the President and the Commissloners.

Privileges of leave etc., which were extended to the President and the Commissioners were the same which were enjoyed by the Government servants drawing the equivalent pay.

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8. *G O. 2979 L. & M.*, dated 25—7—1930.
9. *G.O. 1446 L. & M.*, dated 30—4—1951.
10. *G O. 1217 L. & M.*, dated 12—3—1934.
11. *G O. 2179 P. H.*, dated 23—5—1940.
12. *G.O. 3238 P. H.*, dated 17—12—1943.
13. *G.O. 3057 Ed. P. H.*, dated 3—11—1944.
14. *G.O. 2934 L. & M.*. dated 10—7—1926.

The disciplinary action and the power to suspend and remove the President and Commissioners was vested in the Local Government under Section 15. However during the administration of the HRE Board, there was no occasion for the Local Government to take any disciplinary action and remove the President and the Commissioners before the expiry of the term of office.

The term of office of the President and the Commissioners was five years and though in principle both were eligible for reappointment, seldom were the Commissioners reappointed. The exceptions were Mr. R. Surya Rao who was Commissioner for the first term and later President for five years; Mr. A. S M. Nair who was Commissioner for two terms and Mr. P. Kameshwara Rao who was appointnd Commissioner for the second time almost four years after his first term of office.

There was no provision for pension benefits for the President or the Commissioners. The benefits of a Provident Fund were accorded only in 1942.

Brief History of the Board's Personnel Management

The history of personnel management can be divided into two periods:

1. 1925 - 1940
2. 1941 - 1951

Personnel organization during the first period was some what rudimentary in form and therefore more 'personal', and it was only after the reorganization of 1941 that more advanced techniques of personnel management were adopted.

When the HRE Board was established in 1925, it did not have a blue print for its personnel organization. The organization gradually evolved to meet the needs and carry out the obligations of the Board.

As per Section 17 (a) the Board had the power to determine "from time to time—the number, designation, grades and

scale of salary or other remuneration of its officers and servants."[15] And under Section 17 (b) the President had the power of appointing, suspending, removing or dismissing for breach of rules or indiscipline, unfitness, etc. the officers and servants of the HRE Board.

The Board's personnel belonged to two establishments.

1. At the Head Office.
2. At the *Mofussil.*

During the first year of the Board's administration, the staff at the Head Office consisted of the following posts: [16]

Description of the post	Scale of pay	As it stood in 1926
1. Secretary	400–40–600	1
2. Manager	200–10–350	1
3. Superitendents	125–7½–200	2
4. Upper Division Clerks	60–5–120	10
5. Lower Division Clerks	40–4–60–3–75	14
6. Steno typists	50–5–100	5
7. Attenders	20–1–30	6
8. Sergents	30–1–40	1
9. Daffadar	25–1–36	1
10. Chobdars	20–½–25	5
11. Peons	15–½–20	15

The staff in the *mofussil* stations consisted of the following posts: [17]

15. *Fort St. George Gazette, Madras,* dated 8—2—1927, Part IV, pp. 16–49.
16. *From the First Administration Report of the Hindu Religious Endowments Board, Madras,* 1925–26, p. 39.
17. *Ibid.*

Description of the post	Scale of pay	As is stood in 1926
1. Honorary Assistant Commissioners	Maximum allowances of Rs. 50/- per month	5
2. Inspecrors	120-5-15-	10
3. Assistant Inspectors	50-5-75	13
4. Clerks under Inspectors	25-1-35	10
5. Temporary Clerks under the Assistant Commissioner, Ganjam	30	1
6. Peons	12	28

Each of these above establishments was divided into two groups from 1931 onwards. Besides the permanent staff at the head quarters and in the *mofussil* mentioned above there were also temporary staff at the head office and in the *mofussil.* The Madras Act XI of 1931 had authorised the Board to take over the administration of the defunct Temple Committees. To cope with the additional responsiblity the Board had to expand its staff. During 1931-1932 four temporary hands were employed by the Board" [18] at the head office. With the increasing number of defunct Temple Committees, the temporary staff at the head office and in the *mofussil* begain to increase correspondingly and by 1941 the Board's staff had expanded greatly. This was an important reason for the reorganization of the Board's personnel in 1941. The following figures illustrate this.[19]

18. *Seventh Administration Report of the Hindu Religious Endowments Board, Madras,* 1931-1932, p. 3.

19. *Administration Reports of the Hindu Religious Endowments Board, Madras,* 1931-41.

Temporary staff for Temple Committees' work at the Head Office

<table>
<tr><th colspan="2">Description of the post</th><th>1932</th><th>1940</th></tr>
<tr><td>1.</td><td>Superintendent</td><td>1</td><td>5</td></tr>
<tr><td>2.</td><td>Accountant</td><td>1</td><td>1</td></tr>
<tr><td>3.</td><td>Upper Division Clerk</td><td>—</td><td>6</td></tr>
<tr><td>4.</td><td>Lower Division Clerk</td><td>—</td><td rowspan="2">32</td></tr>
<tr><td>5.</td><td>Clerk</td><td>6</td></tr>
<tr><td>6.</td><td>Copyist</td><td>2</td><td>—</td></tr>
<tr><td>7.</td><td>Typist</td><td>1</td><td>1</td></tr>
<tr><td>8.</td><td>Attendant</td><td>2</td><td>5</td></tr>
<tr><td>9.</td><td>Peons</td><td>1</td><td>4</td></tr>
<tr><td>10.</td><td>Central Audit Officer</td><td>—</td><td>1</td></tr>
<tr><td>11.</td><td>Stenographer</td><td>—</td><td>2</td></tr>
</table>

Temporary Staff in the Mofussil

	Post	1932	1941
1.	Inspector	1	6
2.	Assistant Inspector	—	22
3.	Clerk	—	21
4.	Attender	—	5
5.	Peons	—	28

Neither at the Head office nor at the *mofussil* was there a classification of service as such: There was also no gradation in service. There were only certain standard posts, each with a definite scale of pay.

The staff increased mainly because new posts were created to handle the additional duties the Board was taking on.

The following new posts were created in the head office.[20]

Description of the post	Scale of pay	As it stood in 1940
1. Head Accountant	150-10½-180	1
2. Examiner	100	1
3. Cashier	80-5-120	1
4, Accountant	70-7½/2-100	1
5. Assistant Cashier	50-5/2-75	1
6. Copyist	30 and 24-2/ 2-26-1/2-28	4
7. Reserve Inspector	60-5-90	1
8. Reserve Inspector Clerks	30-1-35	1

New posts at the *mofussil* establishment were:[21]

Post	Scale of pay	As it stood in 1940
1. Superintendent	120-5-150	3
2. Steno-typist	30	1
3. Attendants	15-1/2-20	4

Another important post which was created in the *mofussil* establishments during the decade was that of the Executive Officers. The Madras Act XII of 1935 had authorised the HRE Board to notify the temples which were mismanaged and appoint salaried Executive Officers to manage their affairs. Executive Officers were appointed to both excepted and non-cxcepted temples. By 1940 there were 217 Executive Officers appointed to the various institutions and the pay differed according to the income and importance of the

20. *Sixteenth Administration Report of the Hindu Religious Endowments Board, Madras,* 1940-1941, p. 21.

21. *Ibid.* p. 22.

temples. It ranged from Rs. 2½ per month to Rs. 400–25–500 plus a motor allowance. The Executive Officer was a regular manager of the Board at the temple and he had to carry out the entire administration of temple affairs.

Recruitment and appointment to other posts were made by the President.

One of the qualifications for the appointment was that the candidate should profess Hindu religion. However, this qualification could not be stressed in respect of some of the servants of the temples. Some of the temples in the South employed Muslims as *Mahauts* for the temple elephants. Certain Muslim families were hereditary *Mahauts*, it was difficult to remove them Also, Hindu *Mahauts* were not available, As a result of this the condition in respect of religion was waived and Muslims were allowed to remain in service. A few other qualifications were laid down by rules, made subsequently under Section 67 (1) and (2). One such rule was that "no person shall be eligible for appointment to any post under the Board carrying a salary of Rs. 40/- per mensem or more unless he is quaiified under the Public Service Notification, for the time being in force, for entry into superior service under the Government......"[22] The Board was competent to waive this requirement in special cases and the President could appoint a person without the required qualification to offiee for a maximum pcriod of six months. No person could be appointed Head Accountant in the office of the Board unless he had passed the Government Special Test Examination in the accountancy or possessed a diploma in accountancy.

There were certain disqualifications for service:

1. A person dismissed from the service of the Local Government or any local authority could not be employed except with the previous sanction of the Government.

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22. *G.O. 2934 L. & M.* dated 10—7—1926.

2. Persons convicted of offence involving moral turpitude could not be employed.

The qualifications for Executive Officer were also not stipulated. A few of them were graduates and while others possessed no acadimic qualifications. The aptitude to manage temple affiars was taken into consideration at the time of appointment.

There was no special method of recruitment or appointment. Keeping in mind the above conditions in respect of qulification, the President appointed the candidates according to the knowledge of their suitability.

There was no rigid rule in respect of promotions or transfers from the head office to the *mofussil* establishment. It was upto the President to promote or directly appoint a candidate, as well as deal with questions of transfers.

The Board's personnel drew salaries (as shown in the tables) higher than their counterparts in the Government departments. The travelling allowances drawn by the officers of the Board were in accordance with the Madras Travelling Allowance Rules.

Privileges in respect of leaves and leave allowance which were the same as those that Government servant drawing more or less the same pay enjoied.

As far as the conditions of service[28] were concerned, they were the same as those prescrtbed for Government servants similar standing and status.

The period of probation for every appointment to the post in superior service was two years, with certain discretionary powers to the President to extend the period.

The Rules[24] regulating the personal conduct of the officers and the servants of the Board stated that

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23. *Refer G.O. 3388 L. & M.*, dated 22—8—1930.

24. *G.O.* 10 *P. H.* dated 3—1—1938.

1. the Board's employees were responsible for the acts done by the members of the family,
2. none of them could take gifts, gratuity or rewards except with the previous permission of the Board, and
3. they were not to participate in collection of subscription etc. or engage in pecuniary transactions.

Disciplinary action was to be taken by the President and appeal lay to the Local Government against his order. The appeal was referred to the department of the Local Government to which the HRE Board was attached.

The retirement age for officers and servants of the HRE Board was 55. Extension could be given if necessary.

Reorganisation in the Board's Personnel Management

The second period in the Board's personnel management is significant for the implementation of a few major reorganization proposals. As stated earlier between 1925–1940, the Board's functions had increased considerably. Also, the Board notified innumerable temples under section 65-A of the HRE Act, some of which had no appreciable income. The result was that, there was a steep rise in staff with the accompanying increase in expenditure and the administration of the Board was on the point of breakdown. The Local Government had, therefore, to appoint a special officer to assist the Board to place its administrative machinery on a sound and economical basis. He was specially required to investigate.

"(a) whether there is a need for this existing staff under the HRE Board at the headquarters and in the mofussil

(b) whether suitable qualifiications have been prescribed for the posts and pay fixed

(e) whether appointments made, have been regular, having regard to existing rules prescribed for that purpose;

(d) whether it will be possible to reduce the staff by cancelling the notifications of temples with an annual income of Rs. 1000 and below, and if so, to what extent;

(e) whether the existing rules can be brought into line with those for the Provincial and Subordinate services".[25]

The study of the personnel organisation and its working by the Special Officer brings out the important factor that the personnel organization was not properly geared to its administrative needs. There was no proper work analysis and no correct placement of incumbents. The Special Officer iu his report observed that "the names given to some of the posts have nothing to do with the work attached to them. For instance, in the head office, officers named typists, copyist, attenders, Reserve Inspectors, Stenographers, Assistant Cashier are all rcally clerks. A typist need not know anything of typewriting. A copyist may not write copies at all and is not paid out of a copying fund. An attendant does clerical work. A Reserve Inspector is not an inspecter in any sense. Stenographers do clerical work in the Judicial or Revenue Sections just like other clerks......Similarly in the mofussil, the so called Superintendents do work as Inspectors though they get a higher pay. There are also clerks and attenders who do the same work and there are various salaries fixed in various places for these clerks, various reasons being given for such differeuce of pay."[26]

He recommended the foliowing proposals for the reorgani zation of personnel administration.

1. Retrenchment in staff
2. Classification of services
3. General cut in salaries
4. Reduction in Travelling Allowances
5. Abolition of allowances.

Head Office:

Class I - Officer

1. Secretary
2. Manager

25. *G.O. 3976 P.H.* dated 29—8—1940.

26. *G.O. 1878 P H.* dated 5—5—1941.

Class II – Ministerial Service

Category I –

Superintendent

Category II –

Clerks (I Division)

Clerks (II Division)

Clerks (III Division)

Class III – Inferior Service

Menial Staff including Daffadars,

Attenders and Peons

Mofussil :

Class I – Inspectors of I Division

Inspectors of II Division

Class II – Clerks III Division

Class III – Peons

The scale of pay in respect of the following posts was revised, The revision was brought about on the recommendation of the Special Officer as well as on the initiative of the Board itself.

The following statements will show the alterations in respect of classification, scale of pay and strength :

STATEMENT I

[27] **Statement showing the strength etc. of the Staff in the Head Office before the reorganization and after the reorganization**

Permanent Establishment

Description of Post	Scale of pay		Strength	
	As it was in 1940 (Before reorganization)	As it was in 1941 (After reorganization)	1940	1941
1. Secretary	353–15/2–500	250–30/2–400	1	1
2. Manager	200–10–250	—	1	1

27. *Vide Administration Report of the HRE Board, Madras*, 1940–1941, p. 17.

Description of Post	Scale of Pay: As it was in 1940 (Before reorganization)	Scale of Pay: As it was in 1941 (After reorganization)	Strength: 1940	Strength: 1941
3. Superintendent	125–7½–200	—	5	5
4. Head Accountant	150–10½–180	—	1	—
5. Examiner	100	—	1	1
6. Cashier	80–5–120	—	1	1
7. Accountant	70–7½–100	—	1	First Division Clerks 16
8. Assistant Cashier	50–5½–75	—	1	
9. Upper Division Clerks	60–5–120	—	9	
10. Stenographers	70–5–100 & 50–5–100	—	6	
11. Lower Division Clerks	40–4–60–3–75 and 30–3/2–45–2/2–55	—	22	Second Division Clerks 22
12. Typist	30–1–35	25–1–31	4	Third Division Clerks 15
13. Copyist	30 and 24–2/2–26–½–28		4	
14. Attender	22–1–30		10	
14(a) Attender (Inferior Service)	15–½–20	15–½–20	—	2
15. Reserve Inspector	60–5–90	—	1	—
16. Reserve Inspector's Clerk	30–1–35	—	1	—
17. Deffadars	25-1–35	—	1	Peons 25
18. Chobdars	20–½–25	—	1	
19. Peons	15–½–20 and 12–½–17	—	1	

[28] STATEMENT II

Temporary Staff at the Head Office before and after the reorganization

Post	Scale of Salary		Strength	
	In 1940 Before re-organization	In 1941 After re-organization	In 1940 Before re-organization	In 1941 After re-organization
1. Central Audit Officer	125–15/2–200	—	1	—
2. Superintendent	100–15/2–175	—	5	—
3. Upper Division Clerks	50–5/2–100	—	6	6 First Division Clerks
4. Stenographers	40–8/2–80	—	2	—
5. Accountants	30–3/2–45–2/2–55	—	1	—
6. Lower Division Clerks	30–3/2–45–2/2–55	—	32	23 Second Division Clerks
7. Typist	30–½–55	—	1	—
8. Attenders	20–½–25	25–1–31	5	8 Third Division Clerks
9. Peons	12–1–17	—	4	2

The following statement shows the classification, strength and scale of pay of the staff at the *mofussil* establishment before the reorganization i.e., in 1940 and after the reorganization i.e., after 1941.

28. *Ibid.*

[29] STATEMENT III

Mofussil Establishment — Permanent

Post	Scale of pay		Strength	
	In 1940 (Before re-organization)	In 1941 (After re-organization)	In 1940	In 1941
1. Superintendents	120–5–150	—	3	21 First Division Inspectors (items 1–2)
2. Inspectors	60–5–90 and 55–5/2–100	—	21	
3. Assistant Inspectors	40–2–50 35 55–5/2–100	40–2–50 35 35	1 2 7	3 Second Division Inspectors
4. Steno-typist	30	—	1	—
5. Clerks	30–1–35	—	1	1
	25–1–30	—	2	2
	25–2/2–30	—	3	—
	25–2/2–35	25–1–30	25	17 Third Division Clerks
6. Attenders	15–½–30	—	4	—
7. Peons	12–17	—	34	24
	Temporary			
8. Inspectors	50–4–70 40–2–50 55–5/2–100	— — —	1 3 2	13 Second Division Inspectors (items 8–9)
9. Assistant Inspectors	40–2–60	—	22	
10. Clerks	30–1–35	—	21	12 Third Division Clerks
11. Attender	20–1–25 20	—	2 3	— —
12. Peons	12–17	—	28	12

29. *Vide Administration Report of the HRE Board, Madras,* 1940–1941, p. 18.

With regard to recruitment, appointment, promotion the Special Officer stressed the need for fuller and better rules. Therefore in respect of recruitment, on the recommendation of the Special Officer, it was laid down that recruitment should be initially to the posts of clerks in the Third Division and not more than fifty percent of clerks in the Second Division at the discretion of the President. Recruitment to at least fifty percent of clerks in the First Division and all clerks in the Second Division should be by promotion from the II and III divisions respectively. Recruitment to most of the posts, therefore, was from within.

The following qualifications were laid down for the different posts:

Senior Superintendent: A degree in Law and special experience in accountancy, finance; 30 years of age.

I Division Clerks: Should have passed accountancy tests for subordinate officials conducted by Madras Public Service Commission; merit; ability.

II Division Clerk and Inspector: Minimum General educational qualification, at least III form; for direct recruitment at least 25 years of age.

There was the general qualification that all candidates aspiring to be Board employees should profess the Hindu religion.

With regard to general cut in the salaries of the Board's personnel, the Special Officer recommended that the cut should be according to the following graded scale:

"Three and one-eighth percent on salaries of all officers and servants of the Board drawing a salary of less than Rs. 100/- and those drawing less than Rs. 55/- to be exempted.

Six and one-fourth percent on the salaries of all officers and, servants drawing the salary of Rs. 100/- and more."[30]

30. *G.O. 1878, P.H.* dated 5—5—1941.

The recommendation was accepted by the Board's resolution IX of 15 November 1940 and the saving was of about Rs. 4,130 per year, but the cut was not kept for long. However, the salaries of the Board's Officers and servants (which were higher than their counterparts in Government service) were lowered and made equal to the Government grade.

Besides this the salaries of the Board's staff was subjected to a cut of five percent from 1931 onwards.[31] This cut was removed in 1937. The Board's employees were also entitled to several types of allowances, viz., city allowance etc. The Special Officer recommended their abolition and it was accepted.

With regard to transfer, the Special Officer recommended that there should be interchangibility between the Board's Head Office staff and that of the *mofussil.*

One of the important recommendations of the Special Officer related to the post of Executive Officer. The Board according to Section 65-A of the Madras Act XII of 1935, was taking over the management of temples and managing them through its paid managers. Special Officer fixed the educational qualifications for these posts. Later on it was found advantageous not to insist on the educational qualification. Age limit was raised to 60 years, as old age and experience were thought to be advantageous.

The pattern of personnel management after it was reorganized continued to operate till 1944, when another reorganization was brought about. The Madras Act V of 1944 abolished Temple Committees and in their place Assistant Commissioners were appointed. This required reorganization of the Board's *mofussil* staff. Fourteen Assistant Commissioners were appointed and each had his own staff. The Assistant Commissioners were to work under the control and supervision of the President of the Board. They were to be appointed by the Local Government on the recommendation of the President. Rules, similar to the Government service regulation in respect of discipline, promotion, transfer, leave,

31. *G.O. 1237, L. & M.* dated 31—3—1937.

leave salary, travelling allowance, retirement, condition of service, etc., for the posts of Assistant Commissioners were framed.[32]

Along with this, certain temporary technical posts were created and kept on the register for a few years. These were those of the Consulting Engineer, architect, Gem specialist, Goldsmith specialist, Verification Officer, *Stapathi*, etc.

This drastic reduction in the personnel of the Board did not last long and after a few years the Board reverted to form and continued to swell. On the eve of the abolition of the Board, it consisted of the following strength in the Head Office and at the *mofussil*.

[33] Statement showing the strength of the staff of the HRE Board

	Description of the Post	Scale of Salary	As it stood on 30-6-1951
	Permanent (Head Office & *Mofussil*)		
1.	Secretary	350–50/2–500	1
2.	Deputy Secretary	250–2–/2–310 250–10–300	1
3.	Senior Superintendent	190–10–240	6
4.	Assistant Commissioner	190–15–250	14
5.	Junior Superintendent	140–5–190	13
6.	Upper Division Clerk	80–3–95–5–125	84
7.	Lower Division Clerk	45–3–60–2–90	156
8.	Attender	24–1–32–½ A–35	10
9.	Peons	18–½ A–25	136

32. *G.O. 3037, P.H.* dated 1—11—1944 — see also *G.O. 3297, P.H.* dated 27—11—1944.

33. *Vide Twenty-sixth Administration Report of the HRE Board, Madras,* 1950–1951, p. 16.

	Description of the Post	Scale of Salary	As it stood on 30-6-1931
	Temporary (Head Office & Mofussil)		
1.	Audit Officer	250-25/2-350	1
2.	Assistant Commissioner	190-10-240	2
3.	Junior Superintendent	140-5-190	2
4.	Upper Division Clerk	80-3-95-5-125	1
5.	Lower Division Clerk	45-3-60/2-90	55
6.	Peons	18-½ A-25	23
7.	Verification Officer	500	1
8.	Gem Specialist	300	1
9.	Goldsmith Specialist	75	1
10.	Stapathi	150	1

The Board's personnel administration was without any definite form and techniques of personnel management were adopted as and when they were necessary. The result was that, a sense of insecurity pervaded throughout the organization.

A sense of insecurity prevailed among Presidents and the Commissioners on account of the absence of tenure. The initial term of office was five years. Though there was a provision for reappointment, it was however seldom resorted to. Of the 22 Commissioners, who were eligible, only three were reappointed, The Commissioners had to be practising lawyers, who would have had to leave their practice when joining the Board. After the expiry of the period of office most of them found it difficult on their return to revive their practice.

The staff also suffered a sense of insecurity, though for other reasons. Recruitment, appointment, control, and removal were in the hands of the President. The presence of irregularities in these fields is evident from the observations of the Special Officer, appointed to investigate the working of the HRE Board. He

observed, "It is necessary to classify the services and to provide for the methods of recruitment for each class and category of services and for promotion from one class or category to another whenever necessary. This would make it necessary to prepare a list of seniority among the officers so as to eliminate, on one hand opportunities for exercise of favouritism and on the other, heartburning, and complaints of unjust supersession......".[34] When such conditions exist, it is difficult to find and hold capable men in the job. Thus, while requesting the Provincial Government to exempt certain candidates from the age limit or educational qualifications, the President informed the Government," "out of ten unqualified or over-aged persons whose appointment in the Board's service was approved by the Government .... only one is in service at present and the rest have either left or failed to join the service. Others have since left the service, while some exempted, and overage persons have been appointed in temple service. As there is a dearth of qualified applicants owing to conditions prevailing now, I have to appoint — a few who are overage and fall short of the requisite qualification."[35]

Again, the provision for appeal to the Local Government against the order of the President was not a beneficial one. According to the rules, the appeals could be sent to the Local Government, that is to the Department to which the HRE Board was attached, whereas appeals from the Government employees were sent to the Services Department and later to the Public Service Commission. The latter method afforded better security and redress of griavences, than the former. The President of the HRE Board had greater access to and influence over the members of the Department of the Local Government. This off-the-record infiuence was like a loaded coin and whenever the staff appealed to the Local Government, they all too often refused to interfere.

There was also no provision for pension or Provident Fund. The latter was instituted only in 1942. Such benefits could have

34. *G.O. 1878, P.H.* dated 5—5—1941.

35. *G.O. 2143, Ed. & P.H.* dated 31—7—1944.

added to the appeal of the job by offering the staff greater security in old age and illness.

The Government tried also to solve the financial difficulties of the Board at the expense of the employees. The cut levied on the salaries of the staff continued for six years and this merely added to the hardship.

Owing to all these difficulties, there was always an appeal from the HRE Board through its Administration Reports to provincialize the Board's administration. While stressing the advantages of the provincialization, they put forward four points, one of which related to personnel management. It was pointed out that "The Board's staff ...... a very hard worked set of men ...... will have a sense of security which is now lacking ...."[36] And when the Government decided to provincialize the administration, their sense of relief and appreciation was recorded in one of the Administration Reports, "The provincialization of the Board's administration now under consideration by the Government augurs well for the religious establishment of the Presidency as well as for the Board's officers and servants and there is no doubt that when the necessary legislation is passed, the religious institutions will enter a new and epoch-making phase of life."[37]

During the period under study government service had a special prestige and this greatly influeneed the minds of Board's employees. The Government service not only offered them security but also social status and a certain glamour. People preferred wearing the Government uniform to having an independent career or being the employee of an independent agency. It never occured to the HRE Board that it could hold its own as the Board of Revenue did. The unsatisfactory method and 'practices' which were complained of, could just as easily have been removed with better organization for short of total integration with Government service.

36. *G.O. 5736, L. & M.*, dated 20—12—1929.

37. *Twentysecond Administration Report of the HRE Board, Madras*, 1946–47. p. 13.

Since the Government was anxious to maintain a working balance between the income and the expenditure of the Board, the real purpose of 'supervising the religious endowments' was subordinated to administrative and financial needs. The Government was of the opinion that a Department would manage the religious endowments better then a board. This encouraged the movement and the idea of provincializing the administration of the HRE Board. The history of the personnel of the Board confirms the well observed tendency of units in a bureaucracy to survive and expand and to entrench themselves in spite of changing climates of opinion and changing tenets of public policy.

The full significance of this problem of control and management of religious endowments by the department of the Government of Secular State, never seemed to have been understood by the Government, or the HRE Board or the people. Nobody therefore tried to arrest this trend and the Board's administration was provincialized and before long the Government of Madras came to possess the Hindu Religious and Charitable Endowments Department, which seems very much like a successor of the Ecclesiastical Department of the old regime.

CHAPTER IX

FINANCIAL ADMINISTRATION BY THE HRE BOARD

Finance is the fuel of administration and has two aspects, (1) that of raising revenues in an equitable manner, and (2) spending them in such away that the full value of money is realised. The Board's finance had similar aspects. The Board raised its 'revenues' from the temples and *maths*, and spent them for the better administration and governance of the religious endowments.

Sources of their revenue:

The following were the HRE Board's sources of revenues:

1. Contribution from public religious institutions such as temples and *maths* and specific endowments.
2. Fees for the supply of copies of documents, for issue of notices for search of records, etc.
3. Miscellaneous receipts.
4. Interest accruing on the deposits in the banks.
5. Advances to Temple Committees recoverable.

The main heads of expenditure were:

1. Salaries of the officials and non-officials of the Board.
2. Travelling allowances.
3. Contingencies like the stationery, postage, rent, etc.
4. Law charges.
5. Loans to the Temple Committees.
6. Advances recoverable.

These heads of expenditure also changed from time to time.

The minor sources of revenues sometimes changed, but the main source of revenues always remained the contributions from *maths*, temples, and specific endowments.

As stated earlier, the most important source of revenue of the Board was the contribution from the temples, *maths* and specific endowments under Section 69(1). According to the principal Act, Sec. 69(1), the excepted temples, and *maths* gave 1½ percent of the income to the HRE Board and the non-excepted temples gave 1½ percent of the income to the Temple Committees and another 1½ percent to the HRE Board. Thus the non-excepted temples had to give in all 3 percent of their income as contribution to the Temple Committees and HRE Board and they protested against this discrimination in matter of payment of contribution. This difference to a certain extent violated the principles of good financial administration, though it was defended on the ground that the contribution was really a fee charged for the services of supervision rendered to the religious endowments, It was argued that in the case of non-excepted temples both the Temple Committees and the HRE Board exercised powers of supervision over them and therefore those temples were obliged to finance both institutions. This anomaly was later rectified by the Madras Act of V of 1944, when the uniform contribution of 3 percent of the annual income was collected from all the institutions.

Till 1935 the specific endowments, i.e., the *Kattalais* had escaped the payment of contribution. By the Madras Act XII of 1935; they were also included in the list of contributors to the HRE Board and the Temple Committees.

Method and history of their Collection:

The HRE Board and the Temple Committees employed their own agents to collect the contribution at the rate fixed by the Act. They failed to perform this function effectively and the arrears continued to mount. The Act as amended by the Act XI of 1931 provided some relief in the matter of collection by the adoption of a revenue recovery process. Even this failed to recover the arrears compleately.

The reasons for the failure were many. The HRE Act was not popular with the trustees who resented the payment of con-

tribution. The machinery envisaged and the methods adopted, were neither effective nor adequate. The Board had its Inspectors and other personnel to collect the contributions. Demand notices would be served on the trustees, followed by attempts to persuade them to pay, failing which recourse would be had to the Court. There was no coercive method such as was employed by the Revenue Department. Most of the trustees contended that their institutions were private and that consequently the HRE Act did not apply to them. The result was that there was invariably a sharp difference between the estimates of contribution and the actual sums collected. Thus in the budget for 1928–1929, which the HRE Board framed, the Board took credit for Rs. 4,15,400/- as contribution and actually collected only Rs. 1,89,960/-.[1] By 1931, just before the amendment of the principal Act, the arrears amounted to Rs. 6,94,841.[2] This necessitated the amendment of the Act. The Madras Act XI of 1931 authorised the Collector to take the arrears of the contribution as arrears of land revenue. By 1933, the arrears were brought down to the sum of Rs. 5.54,790/-,[3] the actual signs of improvement in the matter of collection of contribution were seen from 1935 onwards, though there was again a fall.

[4] Statement of Estimates and Actuals of the income of the HRE Board by way of contribution

Year	Estimates	Actuals
1925–26	—	42,869- 6- 5
1926–27	—	60,950- 9- 9
1927–28	—	24,032–11–11
1928–29	4,15,400	1,89,960- 1- 8
1929–30	3,00,000	1,76,043

1. *G.O. 5736 L. & M.*, dated 20—12—1929.
2. *G.O. 3560 L. & M.*, dated 4—9—1933.
3. *Ibid.*
4. *Figures collected from Administration Reports of the HRE Board, Madras,* 1925–1951.

Year	Estimates	Actuals
1930–31	3,00,000	1,87,257
1931–32	3.56 lakhs	1,74,120
1932–33	3.25 „	2,58,333
1933–34	3.45 „	2,10,293
1934–35	2,15,000	2,09,144
1935–36	2,79,000	2,87,288
1936–37	2.82 laks	2,76,314
1937–38	2.84 „	2,51,439
1938–39	2.86 „	2,69,630
1939–40	2.86 „	2,42,372
1940–41	3,68,460	2,56,206
1941–42	3,24,720	2,20,000
1942–43	2.10 lakhs	2.83 lakhs
1943–44	3,01,995	5.08 lakhs
1944–45	4.6 lakhs	4,46,829
1946–47	6.15 lakhs	7.89 lakhs
1947–48	7.91 „	7.92 „
1948–49	8.56 „	8.51 „
1949–50	9.44 „	9.00 „
1950–51	9.80 „	9.5 „

The estimates of contribution and their actuals rarely tallied. In the beginning the estimates were far more than the actuals, demonstrating the failure of the Board in matter of collection of contribution and after 1944, when the Act was amended and the rate of contribution raised to 3 percent of the income, the actuals were more than the estimates. The framing of budget in case of contribution was not quite realistic.

The average income according to the old rate of contribution was as follows :—[5]

5. *G.O. 963 L. & M.*, dated 9—8—1 937.

Receipts of the HRE Board.

			Rs.
1.	Contributions	...	1,91,350
2.	Copying charges	...	2,110
3.	Miscellaneous Revenue	...	4,260
4.	Interest	...	200
	Total Receipts	...	1,97,920

And the average expenditure was as follows:

Expenditure of the HRE Board[6]

		Rs.
1.	Pay of the President and Commissioners.	47,485
2.	Pay of the Secretary	5,088
3.	Pay of the Establishment	97,225
4.	Travelling allowances	15,500
5.	Contingencies	26,950
6.	Law charges	10,000
7.	Audit fees	2,500
		2,04,748

	Rs.
Expenditure	2,04,748
Income	1,97,920
Deficit	6,828

The average deficit would therefore be Rs. 6,828/-.

To set the machinery of the Board working and to meet the financial difficulties, the Local Government went on advancing loans to the HRE Board between April 1925[7] and March 1927. These amounted to Rs. 3,02,500.

6. *G.O. 963 L. & M.*, dated 9—3—1937.

7. *Ibid.*

Serial No.	Date of sanction	Amounts advanced	Interest at the rate of $5\frac{3}{4}\%$ upto 30—6—1935
		Rs.	
1.	8— 4—1925	50,000	
2.	21—11—1925	50,000	
3.	6— 3—1926	65,000	1,27,775
4.	15— 9—1926	60,000	
5.	7— 2—1927	12,500	
6.	22— 3—1927	65,000	30,916
	Total	3,02,500	1,58,691
		Grand Total	4,61,191

Again on 27 March 1929 a loan of Rs. 24,000/- and on 12 December 1930 another of Rs. 50,000/- were advanced to the HRE Board.[8] In all the HRE Board owed the Local Government Rs. 3,76,500/-. Before the entire loan was consolidated the Board had paid a part of it.

At first, of course, the HRE Board was in no position to repay any of the loans. Later, as its financial position improved it sought to repay these. By then, however the loan had climbed to staggering proportions. By 1937 the Board owed the Government Rs. 1,54,772-10-0 as penal interest and Rs. 53,279/- as interest and Rs. 16,292-6-0 as principal.[9] The Government then consolidated the entire debt into a single loan of Rs. 2,86,207-10-0 effective from the 1st April 1937, repayable in forty half-yearly instalments of Rs. 11,163/- each, inclusive of interest at $4\frac{1}{2}$ per-cent per annum.[10] By 1943, the Board had already repaid a total sum of Rs. 4,01,448-1-0 and the balance that was outstanding was Rs. 1,79,772-4-0. The HRE Board in its financial dealings

8. *G.O. 1545 L. & M.*, dated 21—4—1936.

9. *G.O. 2465 L. & M.*, dated 9—10—1943.

10. *G.O. 2750 L. & M.*, dated 20—1—1937.

with the Government ended up paying as interest more than three-fourths of the principal.

It was against this background of heavy arrears, loans and deficits that the Board's budgets were scrutinized by the Local Government. The apparent financial weakness of the HRE Board led to the inevitable conclusion that only greater and stricter control of the HRE Board by the Local Government could improve matters.

About the framing of Budget and all that

The power to frame the budget belonged to the HRE Board. It usually framed its budget in the month of March in the form determined by the rules of the HRE Board. A copy of the budget would be submitted to the Local Government at the end of March. It was the responsibility of the Local Government to see that the budget contained "the provision adequate in the interest of the Government for the due discharge of all liabilities in respect of loans contracted by the Board and for the maintenance of a working balance".[11] If the budget as submitted failed to make these provisions, the Government altered it so as to ensure the inclusion of such provisions".[12] This budget of the HRE Board did not form the part of the Civil budget, but being independent of it was peculiarly vulnerable to alterations and revisions by the Government that were final. After the budget was scrutinized, the HRE Board had the power to execute it. The HRE Board's finances, like those of any other institution, were subjected to annual audit. In the beginning[13] the auditing of the accounts was independent of Government's or Board's control. The Government would prepare a list of certified auditors and the HRE Board had to select a certain number of auditors from the list. Later when the HRE Act was amended by the Madras Act X of 1946 departmental audit was introduced.

Though the Government was armed with limited power, *vis-a-vis* the Board the latter's financial difficulties enabled it to

11. *G.O. 2934 L. & M.*, dated 10—7—1926.
12. *G.O. Ibid.*
13. *G.O. 1962 L. S. G.*, dated 25—5—1937.

exercise greater control than would have been possible otherwise. The Government very often modified the budget of the HRE Board. While scrutinizing the budget, the Finance Department of the Local Government observed, "While the estimates of receipts are not to be relied upon, the Board gaily goes on increasing the expenditure on the establishment. Last year a lump provision of Rs. 8,000/- was made for additional staff. It was reduced by Rs. 4,000/- by Government, but this Rs. 4,000/- cut has been inserted in the budget for 1928-1929, and in addition an Upper Division Clerk, Assistant Examiners, 3 Chobdars, 2 Assistant Inspectors have been provided for. This must come out".[14] The Local Government recommended in their order that "the necessity for further increases in the staff in the present financial position of the Board is not apparent. The provision made for the additional staff will accordingly be omitted. The Government desires once again to impress on the Board the need for retrenchment in its expenditure until its finances materially improve".[15] This was carried out in the revised budget.

In the budget of 1930-1931, the Local Government made even more drastic modifications both in income and expenditure.[16] On the income side the Board had taken credit for a loan of Rs. 10,000/- from the Government. The Board was asked to omit the item as no loan had been sanctioned by the Government. On the expenditure side several modifications were suggested. The following modifications were suggested.

Item	Provision made by the HRE Board	Provision as altered by the Local Government
1. Salary of Commissioners	38,400	33,600
2. Leave allowances of Commissioners and Secretary	1,000	delete

14. *Notes to G.O. 2676 L. & M.*. dated 26-6-1928.

15. *G.O. 2676 L. & M.*, dated 26-6-1928.

16. *Notes to G.O. 3352, L. & M.*, dated 21-8-1930.

Item	Provision made by the HRE Board	Provision as altered by the Locai Government
3. Headquarters Staff :		
One Reserve Inspector	770	delete
One Attender	264	delete
One Peon	180	delete
4. Mofussil Staff :		
10 Attenders	1,800	delete
Lumpsum for additional Staff	1,000	delete
5. Travelling Allowance of President and Commissioners	6,000	5,000
6. For audit charges of excepted temples and maths	2,000	500
7. Repayment of loans taken from Government	50,000	1,00,000

When the Local Self-Government and the Finance Department suggested modification in the budget with regard to specific items, the issue was raised whether the Government had under the rules, powers to subject the Board's budget to such close scrutiny. The Minister in charge of the HRE Board contended that "the law and rules do not permit the Government to interfere with the budget except to see that a working balance is provided for and the provision is made for the repayment of loan".[17] The Finance Department took a strong exception to this and insisted that, for the fulfilment of two conditions, (a) adequate provision for the due discharge of all liabilities and (b) adequate working balance to be maintained between the income and expenditure, the Government had ample powers to suggest modifications in the budget of the HRE Board. Accordingly till the financial position of the HRE Board improved the Local Government continued to make drastic modifications even in the specific items of the Board's Budget.

17. *G.O. 3253 L. & M.*, 15—8—1932.

In the earlier years of its administration, the HRE Board's budgets were not realistic and were rarely based on the realities of income or expenditure of the previous years. During these early years, their income always fell far short of the estimates, while on the expenditure side the Board always made provision for the repayment of loans which they often failed to pay. It was only after the consolidation of the loan that they were repaid with any regularity. The 'paper budgets' of the HRE Board afforded yet another opportunity to the Local Government to exercise greater control over the administration of the HRE Board. While scrutinizing one such 'paper budget', the Local Self-Government Department observes, "the Board's figure of 3,00,000 under 'contributions' is wildly optimistic, and the President in his letter frankly admits it and seems to feel no certainty that he can improve collection work. If we reduce Rs. 3,00,00 to 2,00,000/- (still a generous figure in view of the past facts) the balance closes with a deficit (likely to be recurring) of 49,000 as against the Board's estimated surplus of Rs. 51,000. The Board proposes (hopefully) to pay us back our 50,000 which it again hopes, we will lend it to defend the archaka suits, but we may readily assnme that the net result of this hope will be a request to write off this in view of the Board's failure to realise its anticipated collections. The old loans of Rs. 3,03,500 are conveniently forgotten and 10,000 balance from the 1929 loan of Rs. 24,000/- still remains. Yet the Board gaily proposes increased staff and increased T.A. to the Commissioners. The whole thing is impossible. It is impossible to present the Finance with a budget of this kind".[18]

The execution of Budget

The execution of the budgets revealed a few irregularities during the early years of Board's administration. The Audit Report of 1931-32 pointed[19] out that the cost of several suits had been appropriated by the pleaders themselves and were not paid in to the funds of the HRE Board. Besides the Board was

18. *Notes to G.O. 3352 L. & M.*, dated 6—9—1933.

19. *G,O, 3591 L. & M.*, dated 6—9—1933.

barred from collecting Rs. 5,000/- since there had been remises in collecting it within the time alloted by the statute. There were also certain other irregularities with regard to assessment and one such was that the income from service *inam* was not assessed till 1935".[20] With regard to expenditure, an audit reports point out that even when the scales of pay were revised, the HRE Board appointed several candidates on the old scales which were higher than the new.[21] At the time of its abolition the Board had[22] to settle 1,124 audit objections involving a sum of Rs. 3,97,577. Not surprising the Board's financial administration was one of the main reasons for the provincialization of the Board's administration.

Exasperated by one of those 'paper budgets' the Local Self-Government department once remarked, "........we must take some drastic action. Where are the provincialization proposals and how do they stand? It seems to me, we are faced with three very unfortunate alternatives, 1. to take over the Board with its assets and liabilities as a Government department, 2. to write off all the old loans, give the Board a model budget, organize, the collection work and give the Board a fresh start, I hope for the best. 3. Repeal the Act and wind up the Board as a hopeless failure".[23]

The inherent financial weakness of the HRE Board from the beginning was one of the important reasons for it to be relegated to a subordinate position. Beset with financial difficulties at every turn the HRE Board had always to ask for loans and since, the giver controls the receiver, the HRE Board could never adopt an independent outlook which was expected of any regulatory commission. The financial weakness of the HRE Board correspondingly increased the power of the Local Government which invariably failed to respect the autonomy of the HRE Board.

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20. *G.O. 3661 L. & M.*, dated 9—9—1935, *and see also G.O. 3585 P. H*, dated 22—12—1937.
21. *Notes to G.O. 266 P.H.*, dated 24—1—1939.
22. *Notes to G.O. 3620 Revenue* dated 24—12—1954.
23. *Notes to G.O. 3352 L. & M.*, dated 21—8—1930.

On the brighter side, the Government backing in the shape of loans did help the Board to start its work and continue it for several years. Had it not been for this financial aid, the Board would have suffered a breakdown in the very first year of its administration. However, as stated earlier, the financial aid had its natural consequence. The 'aid' was a loan, pure and simple, to an 'independent agency', and not to one of its own departments. The Government, therefore, was naturally eager to recover them and did not hesitate to drastically modify the budget to achieve it. The inability to fully collect contributions, the weight of loans and strict control of the Government quite demoralized the Board. The result was, before long, the Board began to subordinate itself to the Government.

A characteristic feature of the Board's expenditure on administration was that it steadily rose. During the first year of its administration, the Board incurred an expenditure of Rs. 2,10,706.[24] This rose to Rs. 2.28 lakhs by 1938–1939[25]. While commenting on the staggering rise, the Government remarked, "This state of affairs is unsound and unless corrected at once, will lead to a financial crisis. The Board should devise ways and means to improve its financial position".[26] The position was somewhat better in 1944–45, and in 1945–46 the expenditure was within the income of the Board. This did not last long though. From 1947 till its abolition the Board's expenditure was on the increase. The Government on observing this, remarked, "the expenditure of the Board during the last three faslis has been continuously increasing. This should be checked".[27] The expenditure could not but increase since the functions of the Board had increased. The gradual increase of functions on the one hand led to an increase in the rate of contribution from 1½ percent in 1925 to 3 percent in 1944, and on the other, gave the Government greater power

24. *First Administration Report of the HRE Board, Madras,* 1925–1926 p. 72.

25. *G.O. 1067 P. H.*, dated 15—3—1940.

26. *Ibid.*

27. *G.O. 12 Rural Welfare,* dated 3—1—1951.

of study, scrutiny and revision of the Budget leading to greater control over the Board generally. The heavy expenditure and the indebtedness of the Board ultimately provided powerful grounds for the provincialization of the Board.

A study of the income of the Board shows that the Board was often ineffective in collecting its arrears. The adoption of a revenue recovery process later on, no doubt afforded some relief, but not enough. By 1944–45, the uncollected arrears mounted up to the staggering figure of 4.92 lakhs.[28] It dropped to 3.89 lakhs in 1945–46 when the Board collected 8.36 lakhs, "the highest collection in a single fasli".[29] However, by the end of the Board's administration in 1950–1951, the arrears had again mounted upto Rs. 8.78 lakhs.[30] These figures convery an idea of how ineffective the means and inadequate tools at the disposal of the HRE Board were to the task of collection of arrears. Occasionally the Board failed to send demand notices to a large number of institutions. In 1933–34, it failed to send notices to 1254 institutions.[31] The failure on the part of the Board along with its ineffective methods of collection weakened its financial position contributing to the decrease of its power.

The attitude of the trustees did nothing to ease the Board's difficultes· The trustees very often failed to pay the arrears even after repeated demands by the HRE Board allowing these to accumulate. For speedier and effective collection of the arrears the HRE Board requested the Local Government to amend the HRE Act. The amendment Act XI of 1931 resulted and with it a coercive method of collection was introduced. It authorised the Revenue Department to recover the arrears as arrears of land revenue by attaching the properties of the religious institutions if the trustees failed to pay the arrears after repeated requests. The various rules formulated under the Act, no doubt, sought to lay down the methods of atttachments providing for many safeguards so as to

28. *G.O. 367 P. H.*, dated 6—2—1946.

29. *G O. 189 E. & E. R.*, dated 11—4—1947.

30. G.O. 1176 *Rural Welfare*, dated 7—11—1951.

31. *G.O. 2372 L. & M.*, dated 21—6—1935.

prevent the sale of important and necessary properties of religious institutions. All the same a large number of religious endowments lost their properties as a result of this process. Though information relating to total loss of properties is not available, a study of the operation of this method from 1931 - 1936 reveals staggering figures of loss.

A Statement showing the number of institutions to which either notices were issued or coercive method applied

Years	Institutions to which notices were issued and arrears collected		Institutions to which ooercive method was applied and arrears recovered		Reference tc the G.O. quoted
	Institutions	Amount of contributions collected	Institutions	Amount of coutributions collected	
		Rs.		Rs.	
1932-33	1,075	39,136	3,186	1,19,335	G.O. 2044 L. & M. dated 28-4-1934
1933-34	667	20,480	2,875	93,487	G,O. 2372 L. & M. dated 21-6-1935
1934-35	1,118	27,383	4,435	1,05,534	G.O. 1487 L.S.G. dated 16-4-1936
1935-36	1,284	24,569	5,229	1,34,547	G.O. 875 L.S.G. dated 4-3-1937

The HRE Board was ereated for the administration and better governance of religious endowments. While finances are absolutely necessary to run the administrative machinery, it is very doubtful on ethical and even on administrative grounds, whether the obvious

necessity could justify the infliction of permanent loss of property on endowments which the Board was constituted to protect and preserve. The easy and somewhat thoughtless and routine extension of the established process of revenue recovery to the field of religious endowments highlights fine points of law and morality which do not seem to have received attention at any level. No native principles seemed to have been available; and there was much ignorance of the basic principles underlying British modes of government and administration.

It is in situation like this that one notes the danger and difficulties in the way of providing for safe and adequate machinery for the management of affairs which are peculiar to this country.

CHAPTER X

JUDICIAL DECISIONS ARISING OUT OF THE ACT OF 1927

The Act II of 1927 and its amending Acts were subjected to considerable judicial scrutiny. The resulting decisions helped to clarify the Acts, guide the HRE Board in its administrative action, and also to settle the law relating to Hindu religious endowments.

The following sections led to considerable litigation:

Section 9 relating to Definitions.

Section 18 relating to the powers of the HRE Board.

Section 57 relating to framing of schemes for non-excepted temples.

Section 63 relating to framing of schemes for *maths* and excepted temples.

Section 65-A Notification of temples and religious endowments.

Section 69–70 Annual contributions, assessment of revenue etc.

Section 73 relating to suits.

Section 43 relating to appointment and punishment of servants of temples.

Section 78 relating to delivery of possession to the trustees.

Section 84 Settlement of disputes regarding application of the Act to the maths and temples.

Section 9 defined the following terms:

"Board".

"Committee" (ommitted by the Act of 1944)

"Court".

"Electoral areas" (omitted by the Act V of 1944).

"Excepted Temples" (omitted by the Act X of 1946).

"Hereditary Trustees".

"*Maths*".

"Non-hereditary trustees".

"Notified temples".

"Persons interested".

"Prescribed".

"Religious Endowment".

"Specific Endowment"

"Temples"

"Trustees".

Of these, the following sub-sections came up for consideration before the courts, viz., Section 9(5), 9(6), 9(7), 9(12), 9(13), 9(14), 9(15).

Section 9(5) defines "Excepted Temple". The definition was amended by Section 4 of the HRE Act IV of 1930. This Section amended stood this:

Section 9(5). "Excepted Temples means and includes a temple in which the right of succession to the office of a trustee or the office of all the trustees (when there are more trustees than one) is hereditary, or the succession to the trusteeship has been specially provided for by the founder."[1] This Section was later omitted by Act X of 1946 which abolished "the excepted" category of temples and thus removed the differences between excepted and non-excepted temples. The judicial decisions under these sub-sections have helped to determine its contents and define the terms. *In Kallapalli Krishnamuthy Vs. the HRE Board,* it was

1. Iyer, Ramanatha P., *Madras Hindu Religious Endowments Act II of 1927,* p. 65.

laid down that in determining whether a temple was an excepted temple or not, "the court has to consider not only whether the right to the trusteeship is hereditary, but also whether in fact such right has been exercised by the members of the founder's family. The words 'has been hereditary' in Section 9 (5) of the HRE Act suggest that the right contemplated is one which has continued to be exercised upto date. What has to be taken account of is the *de facto* exercise of hereditary right and not of a mere presumptive right not exercised for several generations."[2]

Kumar a Alaga Somayya Naicker Vs. Hindu Religious Endowments Board, Madras[3] emphasised two more conditions for defining a temple as an excepted one. It was laid down that the succession to trusteeship should be hereditary and secondly, succession to trusteeship should be specially provided for........... *In Madana Palo Vs. HRE Board*[4], it was laid down that when a family has been in management of a temple for four generations and no one outside the family participated in the management, the trusteeship of such a temple was a hereditary one. The action of the Board in this case to exclude Madana Palo from the scheme of management was declared illegal. The grounds for asertaining whether a temple was excepted were that the trusteeship should be hereditary, the right should be actively enjoyed, the succession to the office should be specially provided for or that the management had remained in the same family for four generations. The Board in the cases mentioned above tried in vain to expand its control which otherwise was limited but was prohibited from doing so. The parties which tried to prove that they were hereditary trustees, were inspired by the fact that by doing so, they would be subjecting themselves to a limited control of the HRE Board.

Section 9 (6) which defined 'hereditary' trustee lent itself to considerable litigation. One of the important cases relating to this Section was *Phatmabi Vs. Maji Musa Sahib.* It laid down that the right to hereditary trusteeship under Section 9 (6) could only

2. 69 M.L.J. p. 384.

3. A.I.R. 1938 Madras p. 321.

4. (1937) 2 M.L.J. p. 830.

be claimed if such a right to management was laid down by the founder in the terms of the original foundation. In the same case Justice Sadashiv Iyyer remarked that "a claim to succession by hereditary right to a trustee's office or any other office should be looked upon with strong disfavour by courts, whether the office was created by a Hindu or a Mohammedan or the adherent of any other creed."[5] The Board often desired to have greater control over the hereditary trustees. In the above instance, even the Court did not seem to favour their existence.

With regard to the question whether a *maih* was a public or a private institution under Section 9 (7) it was laid down in *Nadipudi Veerayya Vs. HRE Board, Madras*[6] that the question should be determined with reference to the following factors, namely, evidence in the case, nature of the gift of property, the antiquity of the *math*, the way it was treated by the head of the *math*, and the long-established usages and customs of the institutions.

A doubt whether a *Kattalai* was a religious endowment within the meaning of Section 9 (11) was clarified in *Vythilingam Pandara-sannadhi Vs. G. Ranganatha Mudaliar.*[7] It was laid down that "in the stricter sense a *Kattalai* is a religious endowment, the object of which is the performance of some kind of religious duty in the temple for the benefit of some other individual or institution outside the temple".[8] This decision defined the term '*Kattalai*' more precisely. It also expanded the scope of the HRE Act. As a result of this decision the principal Act was amended and the term '*kattalai*' was added to the list of endowments under the control of the HRE Board. The HRE Board, thereafter, could collect contribution from the income of the *Kattalais.*

The meaing of the term 'specific endowment' was better determined by its judicial interpretation in the *Commissioner for*

5. I.L.R, 38 Mad. (1903) p. 491.
6. (1938) 2 M.L.J. p. 4.
7. 66 M.L.J. p. 98.
8. Ibid.

HRE Vs. Vinayagar Arudra Tiruppani Sabha.[9] While interpreting the term 'specific endowment' the High Court observed that it was a property or money endowed for the performance of any specific service or charity. Thus they held that specific endowment had two important characteristics, the divesting of property, and the inability of the donor to revoke this. In the absence of these, the income could not be treated as a specific endowment. In the case refered to the order of the Board as against the defandents was held illegal.

The term 'temple' under Section 9(12) was defined in a more detailed fashion by a few judicial decisions. Since the Act was applicable to public temples, a question whether a particular temple was a public or a private one, was often raised. As a result of judicial decisions in the following cases, characteristics of 'public' temple were determined. In *Nagureddi Vs. HRE Board,*[10] it was laid down that mere exclusion of outsiders from worship in the temple did not signify the private nature of the temple, Since temple was defined as a place of public religious worship. question rose as to what was 'religious worship'. It was laid down that "if the people believe in the religious efficacy of the worship in the sense that by such worship they are making themselves the object of the bounty of some superhuman power, it must be regarded as a religious worship—the performances of *Nitya Naivaidya Deeparadhana*—the offering of animal sacrifice and the distribution of these offerings among the assembled audience certainly carry the celebration beyond the limits of a mere commemoration,"[11]

By a series of judicial interpretations the constituent elements of public and private temples were more explicitly determined. In a suit that raised the question as to whether a private temple could later be declared public because of the presense of some of the features of public temple, the Hon'ble Judges of the High Court of Judicature at Madras gave the following ruling in the

9. (1952) 1 M.L.J. p. 282.

10. (1937) 2 M.L.J. p: 485.

11. (1939) 1 M.L.J. p. 134 — See also A.I.R. 1939 Mad. p. 134.

HRE Board Vs. V. N. Deivanai Ammal.[12] "In order to consider an institution as a public temple, it is essential that it should be clearly proved that the institution was dedicated to the public. In the case of an old temple such dedication might be presumed from long use by the public as of right. Besides this the general indicative features of a public temple are *Utsava idol*, processions of the idols, the temple *Gopuram*. But when no property has been dedicated for the upkeep of the temple and the expenses are met from private funds, it is difficult to hold that the temple has been dedicated to the public. The mere fact that the public is allowed to worship in the temple is no ground to hold it as a public temple as it was observed by the Privy Council in the *Koman Nair Vs. Achutan Nair* that 'it is not in consonance with Hindu sentiments to exclude the public from worship even when the temple is private'.[13] The action of the Board was declared wrong and the temple was held as private.

The same problem was approached from a different angle in the *Commissioner HRCE, Madras Vs. S. Kalyanasundaram Mudaliar*. Evidence in this case was that 'R' had built a temple and endowed it. It was not used exclusively by the members of the family of the donor but by the public as well, processions were taken out on special occasions and on these occasions *Archanas* and *Deeparathanas* from the public were accepted. Therefore, the Court held that "the provisions of the settlement deed taken along with the other features such as the existence of the *Palipretnam, Utsava Vigraham*, carrying of the deity in the procession, accepting *deeparathana* from the members of the public on the occasion, conclusively establishes that the installation was a place of public religious worship for the benefit of the Hindu community in the village as a place of religious worship; and that it was a public and not a private temple and fell within the definition of Section 9 (12) of the Madras Act II of 1927 and Section 6 (17) of the Act XIX of 1951."[14]

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12. (1953) 2 M.L.J. p. 688.
13. (1953) 2 M.L.J. p. 688.
14. (1956) I M.L.J. p. 309.

Doubts as to whether a '*Samadhi*' (tomb or a place of burial), if it had certain features of a temple, could be considered a 'temple' were clarified in the case of *Bodendra Swami Math Vs. the President, HRE Board.*[15] In honour of Bodendra Swami a *Matam* was constructed on his *Samadhi* and *pujas* were done. In the first instance claiming that the institution was a *math* the HRE Board decided to levy contribution on it. On objection taken by the Committee of Management, the Board came to the conclusion that the institution was not a *math* but a temple. The District Judge held it to be a temple mainly because the public were allowed freedom of access to the *Samadhi.* The High Court of Judicature at Madras differed from the above decision and held that "mere presence of some idols and festivals which have grown round the Samadhi of Bodendra Swami, inevitable in the case of all tombs of saints, would not bring it within the definition of a temple as defined in Section 9(12) of the Act II of 1927. The institution was not therefore a temple." [16]

The constituent feature of a public temple were more explicitly determined in the *Board of Commissioner for HRE, Madras Vs. V. Shama Rao and others.*[17] The Hon'ble Judges decided here that "a mere fact that the temple is outside the dwelling house, that pujas are performed by a paid Archaka, that a big idol is in the temple, that Swamiars are permitted to stay, would not by itself satisfy the requirements of a public temple—. Under Section 9(12) of the Act II of 1927, stating the requirements which are to be fulfilled in order that a temple should be declared a public—the burden of proof under the section lies heavily upon the party who claims a temple to be a public one, to prove the requirements of the public temple as given in Section 9(12) of the Act. There can be no presumption in respect of temples that they are always public until and unless the contrary is proved— In addition, in this case, there has been no collection of any

15. (1955) 1 M.L.J. p. 60.

16. (1955) 1 M.L.J. p. 60.

17. (1955) 1 M.L.J. p. 50.

offerings to the temple, and the temple has been managed by the members of the family as its lawfully appointed trustees".[18]

It can thus be concluded that in order to declare a temple to be a public one, the following conditions must be fulfilled.[19] (a) It must be used as a place of public worship; (b) it must be dedicated to or for the benefit of the Hindu community or any section thereof; and (c) it must be used as of right by the Hindu community as a place of public religious worship".[20] The temple to be a public one should have the usual features like the *Gopuram*, the *Utsava* idol, processions etc., Hindus should be allowed to make offerings there and perform *archanas*, and *deeparathanas*. The burden of proof lay on the party seeking, to declare it public. Until and unless proved otherwise a temple was considered a private one.

As a result of the decisions mentined above the ambiguity in the Act stemming from the definition clause was removed to a great extent. These decisions laid down the various tests to be applied in distinguishing between excepted and non-excepted temples, hereditary and non-hereditary trustee, public and private temples and in determing the nature of specific endowment, it is also evident from a study of these decisions that whenever the HRE Board tried to extend its authority over an excepted or private temple or a hereditary trustee, it was challenged. There were a few 'interested' enough to take up the cause of non-excepted temple or non-hereditary trustees.

The other secttons which lent themselves to extensive litigation were Sections 57, 63—65-A dealing with the Board's power of framing schemes cf management and section 18. More often than not the Board's action under the provision were held illegal.

Section 18 of the Act described the powers of superintendence vested in the HRE Board. Whenever the Board exercised this

18. (1955) 1 M.L.J. p. 510.

19. *P.S.S. Chakrapani Chetti Vs. the Board of Commissioner for HRE, Madras.* Vide (1955) 1 M.L.J. p. 503.

20. Ibid.

power over excepted temples, its action was challenged and the scope of its power questioned. The HRE Board in *Ramaswami Poosari Vs. the HRE Board* had started *suo motu* proceedings under Section 62 (inquiry by the Board into mismanagement) to frame a scheme. The draft scheme had been submitted to the trustees for their consideration. While the draft scheme was pending consideration by the trustees, the Board purporting to act under Section 18, appointed an interim receiver for the temple to realise the collections and offerings on Fridays in the month of *Adi.* The plaintiff appealed to the High Court to issue a, writ of *Certiorari*[21]

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21. Writ of Certiorari : A Note

This is a high prerogative writ of issued by a superior court to an inferior court to certify records of any proceedings of the latter and to review the same with a view to preventing an error of jurisdiction and proceedure of law. In *Ryots Garabandho-vs-Jamindar of Parlakimidi*[21a] the Privy Council explained the nature of the writ and explained how the principles of the writ, with certain limitations, have been transplanted to India. These principles were further discussed elaborately by the Supreme Court in *Province of Bombay-vs-Khusaldas*[21b] which laid down the following conditions to be fulfilled by one seeking the aid of the writ. (1) The writ can be asked against a person, body or authority having a duty to act judicially i.e. the decision must be judicial or quasi-judicial in nature; (2) the challenge must be in respect of excess or want of jurisdiction of the deciding authority; (3) the writ should be to quash the decision of such authority (which has appropriated or exceeded the jurisdiction) or its "order which contains an error of law apparent on the face of the record."[21c] Condition 1 i.e. what constituted judicial or quasi-judicial authority—was elaborately studied in several cases[21d] and their results were summarised in the words of Lord Radcliffe in Nakkuda Ali's case[21e] thus: "The Courts have been readier to issue writ of certiorari to established bodies whose function is primarily judicial, even in respect of acts that approximate to what is purely administrative than to

21a. (1943) P.C. p. 164

21b. A.I.R. (1950) S.C. p. 222

21c. H. M. Seervai: *Constitutional Law of India* Bombay 1967 pp. 585–586

21d. *The King-vs-London Country Council* (1931) 2 K.B. 215: *Regina John M'Evoy-vs-Dublin Corporation* (1878) 2 L.R. Ir. 371 and others.

21e. (1951) A.C. 66

against the Board to quash the proceedings of the Board. It was held that "the order appointing a receiver was *ultra vires* as the Board had no such powers of interference with the trustees of excepted temples, and that the general principle 'that when an Act confers jurisdiction, it by implication also grants the power of doing all such acts or employing such means as are essentially necessary to its execution' cannot override the more particular provisions of the Act which defines the powers".[22] The Court also observed that the appointment of a receiver and actually seizing the offering to ascertain the income was not the only course open to the Board "the order is a serious infringement of the rights of the trustees......, the order appointing a Receiver should be set aside as being in excess of the Board's jurisdiction".[23] The decision established the principle that powers of general superintendence under Section 18 had limited application to excepted temples.

The question of the status of hereditary trustees of excepted temples in the scheme of management was decided in *Madana Palo Vs. HRE Board.* The HRE Board by an order dated 16th October 1928, framed a scheme for the management of Shree Radhakanta Mahaprabhu temple at Bhavanipur in spite of the objections of the appellant Madana Palo that the temple was an excepted temple. Under the scheme the Board appointed a council of three trustees as managers and excluded Madana Palo, who

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ministers or officials whose function is primarily administrative, even in respect of acts that have some analogy to the judicial." Legal implications of condition 2 were examined in a few cases, such as *Sattar Sahib-vs-State of Madras*[21f] and *Sagatmal-vs-Deo.*[21g]. In the latter case it was laid down that if a quasi-judicial authority makes an order contrary to the specific provisions of a Statute, the High Court can issue a writ of certiorari quashing the order. It was under circumstances when the Board purported to act in excess of its jurisdiction that the plaintiff in *Ramaswami Poorsari-vs-the HRE Board* sought the aid of the writ.

21f. (1952) Mad. 352

21g. (1951) N.L.J. 566

22. 68 M.L.J. p. 178.

23. *Ibid.*

claimed to be a hereditary trustee. The High Court of Judicature at Madras upholding Madana Palo's claim to such trusteeship held that if indeed a scheme need to be framed for such a temple, "it should include the hereditary trustee in the scheme of management unless it was proved that he was guilty of gross mismanagement. In the above case it was not proved......so he should be included in the scheme of management."[24] Thus attempt at depriving a hereditary trustee the right of management, unless they were proved guilty of fraud, were held illegal.

The Board made a similar mistake in another case, viz., *Dharmalinga Gardachar Vs. HRE Board,* identifying an excepted temple as a non-excepted one. Acting under Sections 18 and 57, the Board made a general inquiry and framed a scheme for the temple, without making clear the case against the applicant Garudachar. The applicant contended that his temple was an excepted temple, that he was a hereditary trustee, and objected to his exclusion from the Board of management. The High Court upheld his claim to hereditary trusteeship and declared his temple to be an excepted one. They further held that "the procedure adopted by the Commissioner was wrong and the trustee A was prejudiced by such procedure. What is contemplated in Section 62 of the Act is that an opportunity should be given to the trustee to hear what the case against him is and that the Board may proceed to consider whether a case for settlement of a scheme has been made out. The inquiry under Section 62 should be more detailed and thorough than that required under Section 57."[27] The rights of hereditary trustee were thus safeguarded.

In another instance the Board's action under Section 57 amounted to a misuse of its power. Acting under this Section, the HRE Board framed a scheme which attempted to 'award' the 'hereditary trusteeship' to an individual in exchange for a huge donation to a temple. One of the provisions in the scheme read as

24. (1937) 2 M.L.J. p. 830.

25. *Ibid.*

26. (1937) 2 M.L.J. p. 830.

27. 48 L.W. p. 793.

follows : "The said temple shall be under the control and management of a single trustee; and the present trustee S shall be the first trustee under the scheme and the trusteeship shall continue in him and the other heirs of his father, late C, so long as they pay an annual contribution of Rs. Rs. 3,000/- which be set apart...........".[28] It was discovered that S had offered to endow a sum of Rs. 25,000/- for establishing a *Patasala* as an adjunct to the temple. Both the Temple Committee and the Board had accepted his offer and this was held to have influenced the Board's action in appointing him as trustee for life and restricting the appointment of future trustees to the members of his family. The High Court held, that "the effect of the provisions in the scheme was really to transfer the office of trustee by the Board and the Committee to S in return for a present payment of Rs. 25,000/- in cash and a promise to make annual payment of Rs. 3,000/- and such a transfer of the office of trustee for a monetary consideration, being opposed to public policy, could not be recognized as being in accordance with law; that though in one sense the temple benefitted by the appointment, since the benefit came in such a questionable shape, the consideration of benefit of this kind was not permitted by custom; and even if there were such a custom, it could not be recognized".[29] Only thus was the Board prevented from creating a 'hereditary' trustee to a non-excepted temple.

A study of the above cases shows that the Board more frequently than not, had presumed an excepted temple to be a non-excepted one and claimed jurisdiction over it under Section 57. Action under Section 57 was comparatively easier than that contemplated under Sections 62, 63. Also Section 57 gave the HRE Board greater powers of supervision and control than did Section 62 and 63. Perhaps these functions encouraged the Board to take action under Section 57 more frequently than under Sections 62 and 63. The study also reveals that the hereditary trustees were quick

28. Vide A. L. S. P. P. Subramanian Chattiar Vs. Natesa Gurukul; (1938) 1 M.L.J. p. 517.

29. (1938) 1 M.L.J. p. 517.

in challenging the action of the HRE Board and establishing their right of independent action free from the control of the Board.

The HRE Board's action in framing schemes of management for the *math* under Section 63 and notification under Section 65-A were also subjected to frequent challenges. Section 62 empowering the Board to inquire into cases of mismanagement also came under five.. The Court laid down in *Ponnuman Dikshitar Vs. HRE Board*[80] that the Board could take *suo motu* action under the Section if it had reason to believe that there *was* mismanagement. This condition Section 62 imposed restriction on the Board's power of acting *suo motu.*

Section 63 dealt with the Board's power to settle schemes for the management of religious endowments and institutions and this was challenged on a number of occassions. In a scheme framed by the Board in *Mahant Sitaramadass Bavaji Vs. HRE Board,* the associate trustee, appointed by the Board, was granted, according to the Mahant, overriding powers exceeding his own. Clause 3 of the Section empowered the associate trustee to act independently of the Mahant if he did not co-operate with him. The High Court upheld the contention of the Mahant and observed, "The Board under the circumstances had power to appoint an associate trustee but Section 63 does not contemplate that a person so added is in effect to supersede the Mahant".[81] The Court also laid down that the paid trustee was to possess no more power than the co-trustee had under the general law.

The High Court also observed that "the scheme no doubt draws a distinction between religious matters and secular matters and leaves the Mahant comparatively free in the religious matters. The distinction is more easily drawn on paper than worked in practice".[82] Indeed this is the crux of the problem of the management of Hindu religious institutions in India. And yet no serious attempt has been made to draw a line between the two in practice.

30. (1939) 2 M.L.J. p. 11.

31. (1937) 1 M.L.J. p. 475.

32. (1937) 1 M.L.J. p. 475.

In HRE Board Vs. Palani the scheme [33] framed by the Board directed that each of the four hereditary trustees should function once in four years in conjunction with the two non-hereditary trustees. The High Court observed that the scheme practially amounted to the suspension of the hereditary trustees and that there was no provision in the HRE Act which invested the Board with such powers over excepted temples.

In yet another scheme the Board appointed a manager and gave him powers superior to those of the hereditary trustee. The High Court observed, "the provisions of the scheme are such that if they are allowed to remain, the power of the hereditary trustee could be practically set at naught and what could not be done directly would be allowed to be done indirectly by the appointment of a manager by the Board and entrusting all the important duties of management to him under the scheme, he being removable only by the Board. These provisions would reduce the power of the trustee to a cipher." [34]

Section 65-A related to the Government's power of notifying the religious institutions. In *Ponnuman Dikahitar Vs. HRE Board* it was laid down that the "procedure in regard to notification ought not to be lightly resorted to unless and until there is such a serious mismanagement of a temple as would justify an ouster of the trustees in charge of a temple from their office." [35]

A study of the cases cited above discloses the following principles.

1. The Administration can inquire into cases of mismanagement of excepted temples only if it has reasons to believe that there *is* mismanagement.
2. That no preponredance of power over the Mahant is allowed to a co-trustee.

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33. Vide *HRE Board Vs. Palaniandi* (1944) 1 M.L.J. p. 82.
34. (1939) 2 M.L.J. p. 395.
35. *Ibid.*, p. 11.

3. That paid trustees can have no more powers than the co-trustee in general law;
4. To invest a manager with overriding powers amounted to reducing the hereditary trustee to a cipher.
5. That suspension of hereditary trustees even for a short period was beyond the scope of the Board's power.
6. That notification procedure should not be lightly resorted to.

These decisions had the effect of persuading the Board to be cautious in the exercise of its powers over institutions with hereditary trustees. They placed these institutions under a limited control of the Board. They almost succeeded in establishing certain principles, only to be revoked by later decisions challenging them under the HRE Acts of 1951, 1954 and 1956.

Sections 69 and 70 related to the payment of contribution by the religious institutions and endowments to HRE Board and the Temple Committees (Section 69) and the assessment and recovery of costs, expenses and contributions (Section 70). The *HRE Board, Madras Vs. Dasapathi Ramiah* identified the various items on which contribution could be levied by the HRE Board and the Temple Comittees. It laid down that *the nitya nivedya and dceparadhana* were general endowment and as such could be "proceeded against for the contribution payable by the temples."[36]

In *HRE Board Vs. Singaracharlu*[37] it was laid down that the Board, which had assumed control and was performing the duties of defunct Temple Committees under Section 60-A in addition to its own, was entitled to a contribution under Section 69 (2). *The HRE Board Vs. Nagarathina Mudaliar*[38] decided that *Kattalais* which were religious endowments could be assessed for contribution purposes and contributions from them collected. In *HRE Board Vs. Shirur Math* it was held that the HRE Board could collect contributions for any number of back *faslis*. However the

36. (1942) 2 M.L.J. p. 493.
37. *Ibid.,* (1942) 2 M.L.J. p. 705.
38. 69 M.L.J. 1935 p. 549.

Court observed, "the Act did not limit the period for which the arrears of contribution could be collected and though the Act offended the principles of natural justice, it could be remedied only by the Legislature and not by the Court".[39] The 'injustice' was removed by the Act X of 1946 which limited the collection to a period of 3 years immediately preceding the *fasili* in which a notice of assessment was issued.

Section 73 related to institution of suits in the Court by the HRE Board or any "interested" party with the consent of the Board. It granted certain reliefs in the following disputes:

(a) appointing and removing trustees,

(b) vesting any property in a trustee,

(c) declaring what portion of endowed property shall be allocated to any particular object in the endowment,

(d) directing accounts and inquiries in respect of administration and management,

(e) granting such further or other reliefs as the nature of the case might require.

The Section 73 virtually abrogated provisions of the Sections 92 and 93 of the Civil Procedure Code. The purpose of the framers of the Act was to limit by this provision unnecessary litigation. These hopes appear however to have been defeated since a study of litegation would show that this was one of the Sections which was most frequently challenged. New disputes came up for decision necessitating the institution of suits in the Court, and Section 73, of course, could not be a permanent bar. Some of the grounds on which the suits were field were:

1. where a dispute related to funds not utilized for purposes purely religious as contemplated by the Act,[40]
2. when a suit was against a third party,[41]

39. (1935) M.L.J. p. 200.

40. Vide 61 M.L.J. 1931 p. 815. *Vythilinga Pandara Sannadhi Vs. Temple Committee.*

41. Vide 69 M.L.J. 1935 p. 274 I.L.C. 55. *Annamalai Chettiar Vs. Solayappa Chettiar.*

3. suits instituted to establish personal rights,[42]
4. suits for money due on accounts and for damages,[43]
5. suits for declaration that sale of a temple article was a breach of trust.[44]

In these cases the disputes did not strictly relate to administration and management of the endowments and could not therefore be barred by Section 73.

Section 43 related to the question of appointment and punishment of the servants of temples. In the settlement of disputes the HRE Board was given the final power and there was no appeal to Court against the Board's decision. However, judicial decisions subsequently laid down that the Board's decision was not necessarily always final. In *Kallagar Devasthanam V. T. Nambiar* it was held that Board's jurisdiction of the Court could not be ousted in cases where the trustees acted in excess of the powers granted to them under Section 43 (1) even when there was confirmation of his action by the Board.[45] The judicial decision in the case checked arbitrary action on the part of both the trustees and the Board.

Section 78 aimed at putting a trustee, appointed by the HRE Board, in possession of the properties of the religious institution through a summary process of Court. The purpose of the Section was to prevent dismissed trustees from refusing to surrender possession. Judicial decisions helped to clarify this section and make it more effective. In *Narayan Iyengar Vs. Desikachariar* the Court laid down that "Section 78 which confers on the Court, the power to make orders for the delivery of possession, must be held by implication to confer on the Court the power of doing all acts necessary to the execution of its orders".[46] The

42. Vide 55 Mad. 1932 p. 549. *Mazarimul Chanduk Vs. Vedachala Chettiar.*
43. Vide 57 Mad. p. 362. I.L.R. 57 (Mad) 1934; M.L.J. (1934). *Vythilinga Pandara Sannadhi Vs. Ranganatha Mudaliar.*
44. Vide 70 M.L.J. 1936 p. 315. *Guru Swamayya Vs. HRE Board.*
45. Vide (1943) 1 M.L.J. p. 496. *Kallalagar Devasthanam Vs. Thirumalai Nambiar.*
46. 65 M.L.J. 1934 p. 315.

Court by this decision was empowered not only to direct delivery of possession' but also to enforce its order. The summary process had not envisaged the giving of notice to the aggrieved party, but the Court in *Kailasanatha Iyer Vs. Nallasivam*[47] held that an order under Section 78 was illegal if passed without giving notice.

Section 84 related to the powers of the Board to settle disputes as to whether an institution was a *math* or a temple. It provided for the remedy in Court of decisions of the HRE Board. According to the Act II of 1927 only a trustee could apply to the District Court to modify or set aside the decision of the HRE Board, and, subject to the result of such application, the order of the Board was final. The old Section thus gave this right to the trustee alone and other 'interested' parties were prevented from challenging the order of the Board. Here again, the intention of the framers of the Act was to limit litigation. But in the process it denied opportunity to concerned parties to obtain justice on many vital issues. This defect was removed by the amending Act of 1930, which gave 'any person affected' by the decision, the right to appeal against the orders of the Board.

The judicial decisions which followed the amendment offered aggrieved parties more opportunities to obtain justice.

With regard to the scope of inquiry before the District Judge, it was held in *Ishwaranandha Bharathiswamy Vs. Board of the Commissioners for HRE* that "jurisdiction in the Court is not restricted to that of an appellate tribunal and the application being one to which the ordinary procedure of the Court will apply, the parties have the right to produce such evidences as they wish".[48]

There still remained one defect. The order passed by the District Court could not be appealed against. This order was indeed final. To emphasize this, the High Court observed in *Chalapathi Rao Naidu Vs. HRE Board*, that, "the Act has by

47. A.I.R. 1928 Mad. p. 361.

48. 63 M.L.J. 1932 p. 254.

its own scheme clearly indicated a distinction between cases in which questions arising under it, are to be dealt with by a Civil Court as in suit and cases in which questions are to be within a Civil Court as on an application. In the latter case, in the absence of a specific provision, no appeal will lie."[49] The Judges stressed that the right to suit which was granted by Section 73 of the Act was not provided for in Section 84, which provided for application alone. The procedure in 'application' did not provide for an appeal to the High Court. This was remedied by the amending Act of 1946 which gave the right of appeal to the High Court from the order of the District Court,

A study of the decisions revised above shows that between 1927 and 1946 the Court gave greater opportunities to the parties, affected by the decision of the Board under Section 84, to have their grievances redressed in the Court of Law and not be obliged to treat the order of the Board as final which was what the principal Act envisaged. These judicial interpretations most probably influenced the Legislature in amending the principal Act in 1930 giving the right of appeal to all parties affected and not merely to the trustees affected by the Board's decision and the Act of 1946 which gave the right of appeal to High Court.

Under the Act II of 1927, only one case was brought under Section 67, and this related to the *cy pres* application of the surplus funds of religious institutions. The Act had provided for the diversion of such surplus funds to secular purposes and the Board had encouraged such diversion. Though it is a highly doubtful proposition whether surplus funds of a religious institution can ever be diverted to secular purposes as opposed to religious, no-body seems to have challenged this provision in the Act. Indeed among the mass of litigation a strong challenge to the application of *cy pres* doctrine to religious funds is conspicuous by its absence.

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49. 71 M.L.J. 1936 p. 624.

Apart from this deficiency, the several judicial decisions had helped to clarify relevant terms, remove ambiguities and to secure that action under the Act did not contravene principles of natural justice. As a result of these decisions the scope of the Act was restricted in respect of excepted temples and *maths*. The decisions also helped to prevent excesses on the part of the Board, and to settle the law relating to religious endowments. Therefore, the repeal of the Act of 1927 and the passing of the Act of 1951 to that extent unsettled the law. The crop of litigation on almost similar points under the Act of 1951 is a testimony to this observation.

CHAPTER XI

THE PASSAGE OF THE ACT OF 1951

Act V of 1944 and the Act X of 1946 passed by the Advisors had not included the proposals of the Congress Ministry in 1937 to 'provincialize the Board'. This was postponed for enactment by a future ministry. The joint Parliamentary Committee, which discussed the Act of 1935, had decided that the responsibility of undertaking any measure of social reform which might infringe on religion or religious institutions should be squarely placed on the ministers. Accordingly, the Congress Party which formed the Government in 1946, took up the proposal for reexamination in 1947. A few minor alterations were made in the measure of 1937.

The Bill as framed aimed at two objectives and these were:

(a) The consolidation of all the previous laws.

(b) 'Provincialization of the HRE Board. Various Sections of the Act of 1927 also needed to be altered. It was therefore thought necessary to repeal the old Act and enact a new one.

The main provisions of the Bill of 1947 were the following:

1. The Provincial Government was invested with the powers of general superintendence of all religious institutions.

2. A department of the Government was to take the place of the corporate body of the HRE Board. According to the new arrangement there was to be a Commissioner as the head of the department and there were to be several Deputy Commissioners and Assistant Commissioners under him.

3. The charitable endowments were to be brought within the ambit of the proposed legislation. The Regulation VII of 1817, so far as the Hindu charitable endowments were concerned, was to be repealed and charitable endowments were to be managed and administered according to the provisions of the Bill.

4. The Tirumalai Tirupati Devasthanams Act of 1932 was to be repealed and this group of temples was to be brought under the proposed legislation.

5. The Bill also provided for the control of the finance of the *maths*. The Act of 1927 had also applied to *maths*. The differences in the old Act and the proposed legislation with regard to *maths* were as follows:

(a) The Act of 1927 provided for the calling for accounts and their inspection by the HRE Board and the new Bill also gave powers to the Commissioner and Assistant Commissioners to call for accounts, etc., and to inspect them; the difference lay in the fact that the Assistant Commissioners had the same powers as the Commissioner. This was not a great change since the HRE Board could delegate the powers to Assistant Commissioners.

(b) While the HRE Board was not expressly given powers to sanction the budget of a *math* with modifications, the Bill empowered the authorities to make alterations, omissions and additions in the budget of all institutions.

(c) While the HRE Board had no power to settle the scale of expenditure (*Dittam*), the Bill empowered the Commissioner to give directions relating to *Dittam*.

(d) The Bill gave the Government powers to notify the *maths* also; hitherto only the temples or specific endowments could be notified. According to the Act of 1927, the Executive Officers could be appointed; the clause 53 (1) of the Bill provided for the appointment of Executive Officers to administer the endowments of the *maths*. According to the old Act there used to be a manager appointed for the administration of the endowments of the *maths*.

6. Another change related to proceedings in the Courts. Clause 85 of the Bill aimed at restricting the scope of appeals to Courts. Twentyfour years of experience had shown that the Board's orders were often challenged, resulting in extensive litigation. The Act of 1927 had provided for suits and applications against the Board's decisions on issues covered by Sections 53-A

(4), 57 (7), 63 (7), 67 (4), 76 (2), 77 (2), 79-A (3) and 84 (2). The Bill retained the right of suit in certain matters. Four classes of bussiness however were excepted :

1. removal of hereditary trustees,
2. fixing of standard scales of expenditure,
3. *Cy pre's* application of funds,
4. alienation of immovable trust property.

The argument put forward by the framers were that these did not involve "any adjudication of right to private property and so in the interest of avoiding waste of trust funds in litigation, the right of suit in a Court has been taken away, but appeals to the Commissioner are provided for and provision has been made for revision by the Government."[1]

Introducing the Hindu Religious and Charitable Endowments Bill (henceforth HRCE Bill) in the Madras Legislative Assembly on 4 February 1949, the Hon'ble Dr. T. S. S. Rajan stated that the Government was not satisfied with the machinery of the HRE Board which had failed to rectify the mistakes. The HRE Board failed because it did not have enough power to carry out properly the intentions of the trust. The Act of 1927 according to the Minister was only a compromise legislation. Prolonged litigation in which the Board was engaged, also ruined the trusts - while the abolition of the Zamindari system had thrown an added responsibility on the Government. For all these reasons, said Dr. Rajan, the repeal of the Act of 1927 and the enactment of new legislation were absolutely necessary. Referring. to the problem of interference of State in religious endowments, Dr. Rajan pointed out that the past record of instances under the Hindu rulers, East India Company and later the Dyarchy had amply justified the intervention of the Government in order to protect the properties of the religious institutions. To the question raised about the legality of the Government's interference in religious affairs in a secular State, which independent India claimed

1. G.O. 359, Rural Welfare, dated 16—10—1950, and see also "The Hindu Religious Endowments Bill explained." Madras, 1950, p. 4.

to be, Dr. Rajan replied, "We have examined the question and we have been assured that we are within our rights in handling religious institutions and endowments......, the fear of interfering with religious institutions has always been there with an alien Government but with us it is very different. Our may be called a secular Government and so it is. But it does not absolve us from protecting the funds of the institutions which are meant for the service of the people .... Whatever the future Constitution may say when it becomes an Act, under the present Constitution we have complete power to undertake a Bill as we have done............No question of interference with religion could ever be put forward. If in the event of the Constitution coming in and taking away the power which we possess and if we have again to come to this House for powers, we shall not hesitate to do so. Today we have power to go into the question and with all its implications this bill proposes to do that."[2]

One main criticism levelled against the Bill was that it conflicted with the new rights and principles as incorporated in the new Constitution. Mr. A. Vaidyanatha Iyyer, a Member of the Madras Legislative Assembly, contended that while the Government had the power to legislate on this matter under the Act of 1935, but with the passing of the new Constitution which guaranteed the Fundamental Rights to the citizens of India and which granted the Union Legislature certain powers, the State Legislature as such was no longer empowered to enact legislation such as the Hindu Religious and Charitable Endowments Bill which conflicted with the Fundamental rights. According to him and other members of the Madras Legislative Assembly, the following provisions of the Bill conflicted with the articles of the Constitution.

Article 20 of the draft Constitution guaranteed to a religious denomination a right to administer the properties of its trusts in accordance with law. It was contended that if there was mismanagement, a law eould be made to check the misappropriation of

2. Madras Legislative Assembly Debates, dated 4th February, 1949, Vol, XVII p. 677–79.

funds. Explaining this point Mr. A. Vaidyanatha Iyyer said, "administering a property in accordance with law does not mean that a law could be passed taking away the administration itself. That would make the Fundamental Right a mockery. The rights may be regulated but the substance of them cannot be taken away."[3] It was stated by the critics of the Bill on the floor of the House that Clauses 6, 15, 15 (2) took away the Fundamental Right granted under Article 20. Clause 6 vested powers of general superintendence of the religious institutions and endowments in the Provincial Government. Clause 15 vested the powers of general superintendence in the Commissioner. And according to Section 2 of clause 15 (2) the Commissioner was made responsible for the proper management of the secular affairs of religious institutions as well as the proper performance of rituals etc.

Other clauses gave further powers to the Government and its officials:

Clause 16 (1) empowered any official of the HRCE Department to enter a religious institution including the *sanctum sanctorum* for purposes of inspection.

Clause 18 empowered the Government to issue orders to the trustee of a religious institution as also the Matadhipati and thus reducing the latter to the position of a servant.

Clause 32 (1) empowered the Government to dismiss a trustee regardless whether he was a hereditary trustee or not.

Under Clause 38 (1) and 41 (1) the Government had the power to decide disputes relating to succession to the office of *Matadhipati.*

According to clauses 43 (a) (d) (e) the Deputy Commissioner had the power to decide whether an institution was religious or not, and whether a person was entitled to temple honours or not.

The powers of the Court were very much restricted. Appeals lay to the High Court only on questions of law.

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3. Madras Legislative Assembly Debates, dated 4th February, 1949, Vol. XVII p. 689.

According to clause 45 the properties of a temple or a religious institution could be diverted to any religious, charitable or educational purposes by the Deputy Commissioner, even if they were not connected with the object of the institution.

The Government had the power to notify the religious institutions including *math* and appoint a salaried official to administer the trust. It was contended by the critics of the measure on the floor of the House that this too denied the people the Fundamental Right as guaranteed by Article 20.

Again, clauses 85 denied the right to challenge notification, rules, orders and decisions and clause 83 (1) did not allow any suit in respect of administration of religious institutions.

Clause 62 empowered the Government to collect a contribution not exceeding 5 percent of the income from religious and charitable institutions. The sum collected was to form part of the revenues of the Province (clause 62 (4). The sum was to be used for the expenses of the administration. It was contended that these clauses violated Article 21 which guaranteed that "no person may be compelled to pay any taxes, the proceeds of which are specially appropriated in payment of the expense for the promotion or *maintenance* of any *particular* religion or *religious* denomination".[4]

According to clauses 86 and 86 (1) the Government had power to frame rules to carry out the purposes of the Act and "for *methods by which religious institutions should promote the interest* of the Hindu religious endowments."[5] Mr. Vaidyanatha Iyyer expressed grave doubt as to whether it was the duty of a secular State to promote the interest of the Hindu religious institutions. Criticising the proposal for the provincialization of the Board he emphasised that the secular nature of a Government did not permit it to undertake the functions of supervision and administration of religious endowments of a particular community.

4. Vide A. R. Malhotra, *The Constitution of India*, New Delhi, 1931.

5. Madras Legislative Assembly Debates, dated 4th February, *1949*, Vol. XVII p. 691.

To allay the fears of the critics of HRCE Bill Hon'ble Dr. Rajan quoted the opinion of the Advocate-General, according to whom the Madras Legislature was competent to legislate the HRCE Bill. "It goes without saying," he stated "that the charities and charitable institutions are clearly unaffected by Article 19 and 20. As to temples, it is clear that they are public religious institutions and according to juristic conceptions, the idol is the owner. The same legal conception, however, does not hold good in the case of *maths* which are monastic institutions in which particular religions are preached and propagated. But *maths* are also institutions and *Matadhipatis* are trustees. Both in the case of temples as well as in the case of *maths*, the distinction between matters of pure religion and religious rituals, and matters relating to the administration of properties and other secular matters will have to be kept in mind and while the Constitution safeguards the Fundamental rights in respect of the former without any restriction, the latter are subject to such laws as the legislature might enact."[6] However even he doubted the legality of some of the clauses and pointed out that "some of the sections will have to be scrutinized at the Select Committee stage, with a view to ascertaining what sections fall outside the line and where necessary, other suitable amendments or modifications will have to be devised within the limits of the law of the Constitution."[7]

Mr. Vaidyanatha Iyyer's amendment to circulate the Bill to elicit public opinion was lost and the Hon'ble Rajan's motion to refer it to the Joint Select Committee was passed.

The Joint Select Committee was appointed on 26 February 1949. It received memoranda from several individuals and associations. A majority of these as well as those who gave evidence before the Joint Select Committee were against the HRCE Bill.[8] Their contention was that under a secular democracy the Govern-

6. Madras Legislative Assembly Debates, dated 10th February, 1949, vol. XVII p. 978.

7. Ibid. p. 979.

8. Vide Madras Hindu Religious and Charitable Endowments Bill, 1949, vol. I - IV.

ment was not empowered to frame a Bill affecting the religious affairs of the people. They felt that the control to which the *Matadhipati* was subject to, was derogatory to his status and that the extraordinary control over *dittam*, rituals and diversion of surplus funds, etc., was illegal and wrong in principle.

The proposed measures were criticised on legal grounds and also on grounds of general principles.

The following were the major criticisms of the general principles of the Bill.

1. The assumption of power of general superintendence and direct administration of religious institutions was not felt to be in the interests of the Government or the people.

2. It was contended that since in the parliamentary system of Government, the Cabinet might consist of Hindu and non-Hindu member there was no guarantee that a Hindu member alone would be in charge of the endowments.

3. The assumption of powers over religious institutions by the Government struck at the very root of the principles on which the Constitution is rested, that of secularism.

4. The control of 184 major *maths*, 114 minor *maths* and 12,232 major and 16,257 minor temples was beset with difficulties would be too formidable a task even for the Government.

The criticisms offered on legal grounds were that the Bill denied the denominations, and specially the *maths*, the freedom guaranteed by Article 20(b) (c) (d) of the Draft Constitution.

The clauses which denied these freedoms were:

1. Clause 6: Commissioner's power of general superintendence.
2. Clause 15: Commissioner's power to see that the rituals were duly performed.
3. Clause 15 (3): Committee's power to see that endowments were properly managed.

4. Clause 16: Power to enter premises of a religious institution.

5. Clause 18: The trustees to obey all orders.

6. Clause 38: Assistant Commissioner's power to suggest alterations in the standard scale of expenditure of dittam.

7. Clause 40: Power of the Commissioner to modify *dittams*.

8. Clause 45: Power of the Deputy Commissioner to divert surplus funds.

9. Clause 49: Power of the Commissioner to notify the religious institutions.

Most of the individuals also agreed on other defects of the Bill and criticised particularly the clauses which tried to destroy the sanctity of the temple grounds and lower the position of the *Matadhipati*, those that denied the right of appeal to the High Court in cases relating to *Cy pre's* application of surplus funds; which empowered the Commissioner to settle disputes relating to rituals and religious observances.

Associations such as the Dharma Rakshana Sabha and others considered the Bill revolutionary in character.

The Joint Select Committee after studying the evidence made a few important alterations in the Bill. It was decided that area committees should be constituted for temples whose annual income fell below Rs. 20,000/- and that of temples whose income was not less than Rs. 20,000/- should have a Board of Trustees. The Joint Select Committee also laid down that the general provisions relating to temples with an income of Rs. 20,000/- or above were to be applied to the Tirumalai-Tirupati Devasthanams.

The proposals introduced by the Joint Select Committee also included the following measures:—

(a) A trustee of a *math* was empowered to spend at his discretion for purposes connected with the *math* any "*pathakani-*

kas" or gifts of property or money made as personal gifts to the trustee as the head of the *math.*

(b) Surplus funds of the temples were to be utilized for such purposes as the establishments and maintenance of educational institutions for the instruction in the Hindu religion to the Hindu students, the cultivation of Indian Arts and architecture, maintenance of asylums for Hindus suffering from leprosy, poor houses for destitute Hindus and hospitals and dispensaries for the benefit of Hindus.

(c) The Joint Select Committee allowed the institution of suits in the Courts against the orders of the Commissioner and appeal to the High Court against the orders of the Lower Courts.

(d) The period of operation of the notification was limited. According to the original Bill the notification could operate for an indefinite period, the Joint Select Committee limited the period to five years, unless it was cancelled or modified earlier.

(e) It provided for the framing of schemes for *maths* by the Commissioner alone.

(f) The Government was given the power to sanction the sale or exchange of the *Inam* lands.

The HRCE Bill as altered by the Joint Select Committee was introduced in the Madras Legislative Assembly on the 11th September, 1950.

Explaining the main changes introduced by the Joint Select Committee, the Hon'ble T. S. S. Rajan made reference first to the Area Committees. Though he agreed that the old Temple Committees had never worked satisfactorily, the Joint Select Committee, he said, had provided for these Area Committees in deference to public demand. "This Committee" he said, "will have an effective force in the administration of temples as they are empowered to pass orders on *Dittams*, sanction budgets, scrutinize audit reports

appoint trustees, call for records, etc."[9] As a safeguard against these committees being torn asunder by local feuds and factions, the Joint Select Committee provided that the members of the Area Committee should be nominated by the State Government and the Assistant Commissioner should be made to preside over its meeting. For the larger temple whose income was Rs. 20,000/- and more the Hon'ble member said, there would be a Board of Trustees consisting of the hereditary trustees along side a certain percentage of representative of the people nominated by the Government. Since all the big temples already had a salaried officer, he was to continue even under the Board of Trustees. He was to be "in charge of the day-to-day administration and guidance of the Board of Trustees who would merely lay down the policy and would not be burdened with the details of the daily routine."[10]

The Bill as altered by the Joint Select Committee was severely criticised on the floor of the House. It was felt that the Committee by not taking any note of the new Constitution Act had allowed measures and the inconsistencies in the Bill which conflict with provisions of the Act. Mr. Bhashyam, a member of the Madras Legislative Assembly, wanted the Bill to be referred back to the Committee since it offended many Articles of the Constitution. He pointed out that the Bill applied to the Hindu religious and charitable endowments and left out the Muslim and Christion endowments and to that extent, violated Articles 14 and 15 of the Constitution, which provided for the equal treatment of all religions. The Bill also violated Article 26 of the Constitution by denying a religious denomination the right to manage its own trust properties in accordance with law. Further it was expropriatory in its nature, since it deprived the trustees of the right to administer their properties thereby offending Article 31 (1) which provided that no one would be deprived of his property except by the authority of law.

9. Madras Legislative Assembly Debates, dated 11th September, 1950, vol. IV p. 358.

10. Madras Legislative Assembly Debates, dated 11th September, 1950, vol. IV p. 359.

Mr. Bhasyam also stated that the Joint Select Committee never discussed properly the problem of *maths* and that the majority of the people who gave evidences before the Committee had been against the HRCE Bill. He said, "we, in the Select Committee, went against the evidence for the purpose of supporting the Bill in the Joint Select Committee. It is not correct to say that the vast majority of the witnesses were in favour. Most of the witnesses who took the trouble of giving evidence were against the bill or at any rate (against) very many of its provisions of it."[11] Mr. Bhashyam however did not record his minute of dissent in the Joint Select Committee Report.

The other provisions of the HRCE Bill which were criticised, were the proposals for the provincialization of the Board, the diversion of surplus funds and the establishment of nominated area committees. It was held that provincialization and the creation of a department of Government for supervision and better administration of religious endowments defeated the secular principle of the Constitution. Besides, it was argued that instead of taking over the supervision, of such endowments the Government could take action under Sections 92 and 93 of the Civil Procedure Code that provided for judical relief against mismanagement.

Regarding the diversion of surplus funds, it was stated that diversion to secular and charitable purposes would be contrary to the deeds of the trusts. It was also uncertain whether the administration of properties of *maths* which (properties) were situated outside the Madras state could be, subject to dual control, the control of the Madras state because the *maths* were situated within its jurisdiction and that of the State where the *maths* was situated. The principle of nomination of members to Area Committee was criticised and it was suggested that such members should be elected and not nominated.

Replying to the critics, Hon'ble T. S. S. Rajan maintained that under article 25 (2) of the Constitution the Government did have

11. Madras Legislative Assembly Debates, dated 11th September, 1950, vol. IV p. 370.

the power to regulate the economic and financial activities of a religious trust. He emphasized that clause 22 of the HRCE Bill aimed at general powers of supervision and contemplated no interreference in internal management.

To the proposal of taking advantage of Sections 92 and 93 of the Civil Procedure Code, the Hon'ble Law Member replied that the Bill would merly assist in carrying out better the intention of these Sections. And as for the question of possible dual control of the properties of maths, it was explained that if there was a conflict of jurisdiction it would be removed by executive orders.

The Madras Legislative Assembly passed the Bill, with a few drastic alterations to the originat Bill. There were 400 amendments tabled and the majority of them were discussed. About 52 of them were incorporated in the Bill. One important change related to clause 7 of the original Bill, which conferred on the Government general powers of superintendence over all religious institutions. In response to public criticism the power was taken away and vested in the Commissioner. Secondly, the power of diverting the surplus funds, originally granted to the Deputy Commissioner, was transferred to the trustees since the original clause in the Bill conflicted with Article 26 (a) of the Constitution. Greater autonomy was given to the trustee by the new clause 51 and the scope of interference by the Deputy Commissioner was reduced. Besides, the right to file suit in the Court was extended to two more matters, pertaining to whether the trustee could hold office as a hereditary trustee or not, and secondly to determine whether a person was entitled to any honour in any religious institution and what the established usages of religious institution were with regard to such questions.

The Bill, after being passed by the lower Chamber was sent to the upper Chamber. In the Legislative Council it was subjected to criticism mainly by the Opposition. The Hon'ble Dr. A. L. Mudaliar argued that it was very wrong to subject religious endowments to the control of the Government which was itself subject to sweeping changes in ideologies and personnel. Criticising

the vesting of enormous powers in the Commissioner, he said, "this gentleman, who is known as Commissioner, will be a super *Matadhipati* under the Bill.........He has power to control, to direct and to supervise the Deputy Commissioner, the Assistant Commissioner, the ordinary trustees, hereditary trustees, Board of Trustees, etc. He has extraordinary powers to listen to every body and pass final orders. There is no appeal from the Commissioner's final orders in the majority of instances......This is fundamentally wrong. Itis good to give to the Board such powers, but it is bad to give the same to an individual. All power corrupts. Great power greatly corrupts and there is no one who is not susceptible to such corruption when power is given to him in an unlimited measure."[12]

Dr. Mudaliar also deplored the introduction of nomination for the constitution of Area Committees. While, he said, efforts were being made elsewhere to revitalize panchayats and introduce adult franchise in the country, in Area Committees, on the other hand the principle of election was being superseded by the principle of nomination.

Clauses relating to the *maihs* were considered offensive to the dignity of the *Matadhipati* and it was suggested that the *Matadhipati* should be allowed to appoint a trustee to manage the secular affairs of the *maths.*

The Bill was passed by both the Chambers of the State Legislature and put on the Statute Book as the Act XIX of 1951, on August 27, 1951.[13]

This act repealed the Act II of 1927 relating to Hindu religious endowments and Regulation VII of 1817 relating to the Hindu charitable endowments. Under Section 2, it retained the power to extend its provisions to the Jain endowments. The Act made the following provisions for the better supervision and governance of the religious and charitable endowments belonging to the Hindu and Jain religions.

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12. Madras Legislative Assembly Debates, dated 20th January, 1951. vol. III, p. 185.

13. Fort St. George Gazettee, Madras, dated 28—8—1951 Pact IV-B, vol. III, p. 6 extraordinary p. 175.

The old administrative machinery was abolished and the Administration of Hindu religious and charitable endowments was vested in a department of the Government with the Commissioner at the head. Under him were the Deputy Commissioners, Assistant Commissioners, Area Committees and Board of Trustees. The State was divided into Areas, each under a Deputy Commissioner to whom some of the powers of the Commissioner, were delegated. The State was also divided into divisions, each under the charge of an Assistant Commissioner. Below the Assistant Commissioner were the Area Committees for all temples situated in an Assistant Commissioner's division or a part thereof. However, the Area Committees had no jurisdiction, over religious institutions whose annual income was more than Rs. 20,000/- per annum and which were managed by a Board of Trustees.

The Commissioner under Section 18 had the power to call for and examine the records of any Deputy Commissioner, Assistant Commissioner, or the Area Committee or any trustee, other than the trustee of a *math*, or of a specific endowment attached to a *math*. To satisfy himself of the correctness in respect of any proceedings of an order he was empowered to review any proceeding under the Act, unless was the subject of a suit in the Court.

Various terms like temple, *math*, religious endowment, etc., were defined. "Religious institution" was defined as meaning a *math*, temple, or specific endowment and the religious endowment was the property belonging to *math*, or temple, or bestowed for the purpose of some services or charity etc. Trustee was the person in whom administration of property of such institution was vested. The *Matadhipati* was also a trustee in a sense.

Chapter III dealt with provisions applicable to all religious institutions. Administration, general superintendence and control of all religious endowments were vested in the Commissioner (Section 20). The power of superintendence included the power to pass any order which was necessary to ensure that the endowment was properly administered and the income duly appropriated to the purpose for which they were founded. Section 21 gave the right

to any officer (professing to be a Hindu) of the Department to enter the premises of religious institution, including the *sanctum sanctorum.* A trustee was expected to obey all lawful orders issued by the Commissioner, Deputy Commissioner or Assistant Commissioner. Section 24 laid down the care, the trustee was expected to take of the endowment. The other Sections directed the trustee to keep proper accounts and have them verified and checked by the Commissioner who was authorised to make necessary alteration, omissions, etc. in the register. Diversion of funds by the trustees, with the previous sanction of the Deputy Commissioner, was also allowed (Section 31).

Chapter IV dealt with *maths.* The trustee of a *math* could be removed on the grounds specified in the Act itself by a suit instituted by Commissioner, or any two persons having interest in the *math* and having obtained in writing the consent of the Commissioner. If the succession was in dispute or the trustee was a minor, the Commissioner could make an interim arrangement. Under Section 54 the trustee of a *math* had to submit the *dittam* to the Commissioner and after receiving suggestions if any, the proposal would be scrutinized again by the Commissioner. However, the trustee could appeal to the Government against the decision of the Commissioner. A trustee had a right to spend the *pathakanikas* at his discretion for purposes connected with the *math* (Section 55). Section 56 authorised the Commissioner to call upon the trustee of a *math* to appoint a manager for the administration of secular affrairs of the *math* and report the name to the Commissioner. The manager so appointed was of course subordinate to the trustee of the *math,* and responsible along with the trustee, for the due submission to the Commissioner, of the registers, accounts and budgets of the *math.*

Chapter VI related to inquiries. The Deputy Commissioner could inquire and frame a scheme of management for temples and *maths.* While framing the scheme he could appoint a paid Executive officer. The order of the Deputy Commissioner could be appealed against to the Commissioner; against the decision of the Commissioner an appeal lay to the Court.

Chapter VI dealt with notified religious institutions including *maths*. The Commissioner would inquire and if he was satisfied that the institution required to be notified, he would report it to the Government. The Government would publish the notification in the Fort St. George Gazette (Madras) and the notification would remain in force for 5 years. The purpose of notifying the religious institution was to take over the administration of its seeular affairs for a period of 5 years and vest it in an Executive officer appointed by the Commissioner. The Commissioner was to decide the powers and duties of the Executive officer.

Chapter VII dealt with budgets, accounts and audit. The trustee was expected to keep regular accounts which were to be audited by an auditor.

Chapter VIII dealt with finances. Section 76 empowered the Government to collect an annual contribution not to exceed 5 percent of the income of the institution. This was to be levied for the services rendered by the Government and their officers to religious institutions and in the case of these institutions which enjoyed a certain income, there was a further charge of 1½ percent for audit. Under the Act of 1927 the levy was 1½ percent though later it was raised to 3 percent.

Chapter IX dealt with the system of management of the Tirumalai Tirupati Devastanams. And the Chapters X and XI dealt with miscellaneous and transitional provisions.

The act XIX of 1951 was nothing new in the annals of the administration of religious endowments. The foundations of the Act of 1951 were laid to some extent by the Act XX of 1863, Act II of 1927 and its ten amending Acts. The Act of 1951 merely finalised the trends which the old Acts were establishing, chiefly those of the centralization and provincialization of the administration.

The central feature of the Act XX of 1863 was the elected Temple Committees. The study of the working of this Act has already revealed how the Temple Committees were a failure. Yet this feature was retained in the Act of 1927, though with limi-

ted powers and more control vested in the centrally constituted HRE Board. The Temple Committees of the Act of 1927 also failed and the HRE Board began to assume the responsibilities of those Committees as early as 1929. Gradually the number of these Committees declined and finally in 1944, the provisions relating to them were removed from the Statute book. However, owing to public demand the Joint Select Committee incorporated a provision in the Act of 1951 relating to 'Area Committees' which were a poor substitute for the old Temple Committees; as the elected Temple Committees of the Act XX of 1863 and Act II of 1927 gave place to the nominated Committees of 1951. This in itself explains the tendency towards centralization in the administration. The power of nomination rests with the Commissioner. Thus the power of a centrally constituted authority has greatly increased. The provision for nomination of members to the Area Committees was included on the ground that che Commissioner would nominate influential men who would be free from local feuds and quarrels, and this would create stability in the Area Committees. However nomination defeats the purpose of securing local initiative. A body which does not spring from the local people but is superimposed by the central authority, though consisting of local people, cannot provide for a vital self-determining body but will only be an extension of the central authority. The members of the Committees cannot but support the policies of the nominating authority. The fear had already been expressed on the floor of the House that the Committees would be packed by the supporters of the Government.

Another factor which encouraged centralization was the working of the HRE Board. As the Temple Committees were becomming extinct, the powers of the central authority, the HRE Board, were increasing. The administration became more centralised as the Board created its own temporary staff in the *mofussil* (countryside) areas. With the increase in powers of the Board, the powers of the President of the Board likewise increased. Judicial functions were carried out better than the administrative and executive functions, though in fact the latter two were rapidly growing in

importance. On several occasions there were requests to the Government from the President of the HRE Board to treat him as the head of the Department. This request was not camplied with, though, it was gradually realised that for the sake of executive and administrative efficiency the department headed by one man would be preferable to the existing Board. The act of 1951 abolished the Board and a department of the Government was created to look after the administration of the HRE.

The central feature of the Act of 1951 was the "provincialization of the HRE Board." The proposal initiated at the beginning of the Board's administration was given steady encouragement by the administration and the staff of the HRE Board.

As early as 1928 there was a recommendation from the President of the HRE Board to the Government that 'the removal of financial difficulties by the provincialization of the Board will certainly advance its work of regularising and improving the management of religious institutions......"[14] Such recommendations were repeated often by the Board to the Government in their several administration reports. The Committee presided over by Sir A. Ranganatha Mudaliar desired the introduction of the proposal as early as 1927.[15] The special Officer appointed by the Government to suggest ways and means of placing the Board on an efficient and economic basis, observed in his report, "the correct remedy is the taking over of the administration of religious endowments by the Government themselves and administering them through a Government Department. And I may be permitted to add that the reform cannot be long postponed."[16] Keeping this in mind the President of the HRE Board wrote to Government, "It is needless to impress upon Government how desirable it is to provincialize this Board and make it a complete department of the Government."[17] Besides the staff of the Board also wanted to be Government servants rather than

14. G.O. 726, L. & M., dated 11—2—1929.

15. G.O. 1825, P.H., dated 13—6—1942.

16. G.O. 1878, P.H., dated 5—5—1941.

17. Ibid.

the Board's. The privileges which their counterparts in the Government service were enjoying were denied to them. The constant agitation from the staff strengthened the movement and finally led to the provincialization of the administration, abolition of the Board and establishment of a department of the Government.

The study of these trends show that the Act of 1951 was not accidental but a culmination of the aspiratiors of those who were members of the administrarion.

'Organized opinion' as expressed by associations and individuals before the Joint Select Committee and expressed through the Press was however not in favour of the Act. Provincialization, the central feature of the Act, was not welcomed by these groups.

As many as 227 representations were made to the Joint Select Committee through associations, in individual capacity or by passing resolutions were passed concerning the HRCE Bill; and over 90 percent of them were against the proposed legislation. Their line of criticism as has been stated earlier was that the adoption of the ideology of the secular State did not permit the Government to undertake the responsibility of administration and supervision of religious institutions through its Commissioner. The provisions relating to *maths* were objected to and the denial of Fundamental Rights was also protested against. The Government was urged to drop the legislation. There is a marked contrast between the *'organized public opinion' as expressed through* Memoranda after the operation and failure of the Act XX of 1863 and after the operation of the Act II of 1927. After the failure of Act XX of 1863, the Government was urged to give up its policy of religious neutrality and exercise the supervisory control which the Board of Revenue had exercised under the Regulation VII of 1817. After the operation of the Act II of 1927, this view seems to have been abandoned. Administrative, supervisory and fiscal control as exercised by the Board as well as the control or the type as envisaged by the Act XIX of 1951, seems to have created an opposition to the very idea of a control. The Government was now urged to give up the proposed legislation or suitably modify it, keeping in mind the secular aspect of the Constitution.

There was opposition also from the Press. When the HRCE Bill was published, it was held that, "for a secular Democratic State, it would be, to say the least, anomalous if the supervision and control of religious endowments of the Hindus alone should be vested in the secular Government."[18]

While criticising the Bill, it was stated, "Provincialization is assuredly not the remedy for this state of affairs. It may merely be with the aim of tempting the Government to replenish the general exchequer by frequent raids on the funds of religious endowments and hastening the decay of religious sentiment by allowing the secular power to encroach on the sphere where it has no *locus standi.*"[19] It was also believed that Governmental control would "prepare the way for the creation of a theocratic State. This is entirely opposed to the policy adumbrated by leaders like Pandit Jawaharlal Nehru........... The least the Government can do to avert the establishment of theocratic Government is to insist that the funds of religious institutions be administered by their trustees, assisted and guided by representatives of allied religions and communal organizations and subject to audit by agencies recognized by the Government."[20]

Dr. T. S. S. Rajan stated on the floor of the House that he had a 'mandate' from his party which enjoyed the confidence of the Legislature. However not all members of the Congress Legislature Party supported the Bill. Of the 190 members on the roll, only 70 voted for the bill.[21] It was also reported at the time that within the Congress party itself there was a very strong cleavage of opinion. In a matter that affects such intimate concern as religion it would be a negation of democracy to deny freedom of action to party members.[22] The party mechanism leaves little scope for the expression of individual opinion on the floor

18. The Hindu, Madras, dated 13th January, 1949.
19. The Hindu, Madras, dated 29th January, 1949.
20. The Mail, Madras, daied 6th December, 1947.
21. The Hindu, Madras, dated 5th February, 1949.
22. The Hindu, Madras, dated 29th January, 1949.

of the House. When Mr. A. Vaidyanatha Iyyer, a member of the Madras Legislative Assembly, wanted the Bill to be published again to elicit public opinion, he was "peremptorily warned by the party whip for proposing to do just the thing which Dr. Rajan has insisted on doing with regard to the Muslim Wakf Bill."[23] The Congress Party which brought in the legislation did not fight its election on this issue.

'Unorganized opinion' is rarely vocal or effective in important cases and issues like bifurcation of states, adoption of an official language, enhancement of fees in the universities and such, attract greater *attention and improve demonstrations of protest* more readily than nicer issues such as the secularism". Rule of Law or individual freedom. The bulk of the people, although they expect the Government to grant or deny them freedom, are rarely alert enough to repel the invasion of their liberty by the Legislature or the Executive.

All too frequently in newly created States men who are fired by enthusiasm and zeal, are apt to bring in drastic legislation so that the Executive is vested with excessive power and are allowed the unfettered exercise of their authority. Speaking on the HRCE Bill, the Hon'ble Mr. O. P. Ramaswamy Reddiar, Premier and Leader of the House said, "In bringing forward this Bill, Sir, let me make it clear that I have the highest interest of our faith at heart. It is my spirit's consolation and life's inspiration ....The regulation of Hindu temples and *maths* is the regulation of the community's life and conduct; the revival of our temples is the revival of our people. The temple is the invaluable link between Man and God, between society and religion, between public morality and private morality......... If we do not make our temples a positive force, radiating a healthy, progressive social and cultural outlook, we shall be playing into the hands of the turbulent Godless crowd. This, Sir, is the true significance of this Bill. Sir, our faith is our greatest heritage. And may God give us the wisdom to cherish it as a living force now and for ever........4........Sir, a great work lies ahead. If *poojas* and

23. Ibid.

festivals in the temples have to be conducted in the spirit of the scriptures, our *archakas* have to be made familiar with the basic principles of the *Agamas* and the *Thanthric Sastras*.........the propagation of a truly tolerant faith in a world rapidly plunging into materialism requires considerable planning and organization ...."[24] Over jealous 'reformer' when takes up the reins of Government, is apt to lead to legislative and executive tyranny. On hearing the speech one got the impression that the Commissioner who was already vested with enormous powers, was expected to do many more things than merely supervise the administration of religious institutions. Greatest dangers to liberty lurk in the invidious encroachment by men of zeal, well meaning but without understanding. The liberty of the individual, on such occasions, can be seriously impaired.

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24. Madras Legislative Assembly Debates, dated 10th February, 1949, vol. XVII, p. 973.

CHAPTER XII

THE ACT OF 1951 : LEGAL OBJECTIONS AND JUDICIAL DECISIONS

As soon as the Madras Act XIX of 1951 was placed on the Statute Book it was challenged in the Court of Law. The challenges aimed at 1. studying the consistency or otherwise of some of the provisions of the Act with the Indian Constitution, specially the articles relating to the Fundamental Rights, and 2. studying the consistency of the Act with the principles of natural justice.

The Shirur math case :

The constitutional and legal implications of the Madras HREC Act of 1951 were elaborately scrutinised in the *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Math* Vs *The Commissioner, HRE Board*[1] more popularly known as the Shirur Math Case.

Briefly the background to the case is as follows: The *math* of Sri Lakshmindra Thirtha, Swamiar known as Shirur Math is situated in Udipi in the South Kanara district in South India. Another *math* in Udipi is the Sri Krishna Math, associated with Sri Madhvacharya, the well known exponent of the pluralistic theism of the Hindu religion. Besides the two major *maths* there are eight other *maths*, each presided over by *Matadhipati.* There is no *Matadhipati* for Sri Krishna Math and the Swami of the eight *maths* presided in turn over the Sri Krishna Math. This change-over known as the '*Paryayam*' is celebrated on a grand scale and devotees from distant parts of Mysore congregate in Udipi for the occasion. The '*Paryayam*' Swami by tredition is under an obligation to feed the pilgrims and is expected to meet the expenses from the income of his *math*, the Sri Krishna Math and from other contributions, borrowings and savings. "The

1. (1952) 1 M.L.J. p. 557.

Paryayam Swami almost by usage borrows."[2] The Shivali Brahmins who claim to be the followers of Sri Madhvacharya claim this as their exclusive *math.*

In 1919 the petitioner was installed as *Matadhipati* of the Sri Krishna Math at a time when the *math* was already heavily indebted. The Swamiji did make an attempt to pay debts but during the two *Paryayam* ceremonies was obliged to incur heavy additional debts. At this point the Board, in exercise of the powers vested in it under Section 61 (a) of the Act II of 1927, requested the Swami to appoint a manager and report his name to the Board. One Sripatchar was appointed agent with power of attorney on 24th December 1948. The petitioner complained that this action was instigated by one Lakshminarayana Rao, an advocate of Udipi, who was anxious to have a controlling hand in the affairs of the *math.* The agent, it was alleged, managed the affairs of the *Math* without reference to the Swami and even failed to show the accounts to the Swamiji. At this Swamiji served him notice & terminated his services. This and other similar events culminated on 6th November 1950, in the issuing of a notification to the Swamiji to show cause why a scheme of management should not be settled for the *math* under Section 63;

According to the HRE Board the reasons for the issuing of the notice were:

1. The trustee of the *math* had been borrowing money even when there was no need and spending it without the sanction of the Board, utterly disregarding the directions issued to him in Memo. 75887/48 dated 13th March 1947;

2. The properties of the *math* were being leased out at low rent contrary to the interests of the *math*;

3. Properties comprised in *Patta* in Uppur had been alienated;

4. The manager had been prevented from carrying on his duties and the power of attorney granted cancelled.

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2. The South Kanara Manual, vol. I, pp. 147–148.

The petitioner's objections to Board's action rested on the following grounds:

1. The Board had acted with bias (instigated by Lakshminarayana Rao and Sripatchar);

2. No case of mismanagement had been established against the petitioner since it was not he but the 'agent' who had been incharge of the management for the last two years;

3. Grounds for the appointment of the agent were vague and no reasonable opportunity had been given to Swami to show cause;

4. The order was perverse as it was solely aimed at the removal of the manager without any enquiry into the charges levelled against him by the Swamiji;

5. That the order of the Board not only denied him his legitimate fundamental rights of property or freedom of religion but the impugned Act (of 1951) contravened the following Articles of the Constitution: Articles 14, 15, 19 (1) (f), 25, 26, 27 and 30 of the Constitution.[3]

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3. Art. 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Art. 15: (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No critizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

Art. 19: [4](1) All citizens shall have the right—

(f) to acquire, hold and dispose of property; and

The High Court of Judicature at Madras in its verdict, made certain observations with far reaching implications on the institution of *math*, its head the *Matadhipati* and the juristic relationship between the two.

Art. 25: (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jains or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Art. 26: Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

Art. 27: No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religious denomination.

Art. 30: (1) All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

They held "the *maths* are centres of theological learning specially for the study, practices and propagation of the cult of each system of Philosophy...........to train a line of competent teachers whose duty is to spread the particular knowledge........ they are therefore like colleges established and founded for the study and teaching, for the propagation of a cult of the religion peculiar to the *math*."[4]

About the *Matadhipati* they commented that he was "the spiritual head, the teacher and the *Guru*. He carries on the worship of the Deity of the Math, maintains the discipline and propagates the religion of the institution. He has large powers over the property of the Math as well as its income. He has beneficial interest in the property and its income. The religion and the secular management of the property of the Math are independent so that one simply exists for the other. The *Matadhipati* has got to manage both for the sake of efficiency."[5]

The observations of the Judges on the juristic relationship between the *math* and its head, were, "the head of the Math is not a mere trustee in the sense in which that word is used in the law of trusts and his position cannot be brought under any legal label known to English jurisprudence. He is not even a life tenant in respect of the properties permanently vested in the Math or the religious institution. He has a right to income but he has no power of disposition over the corpus unless necessity or benefit is established. He has large powers over the surplus of this income after meeting the demands of the institution such as its maintenance, its disciples, and the performance of the daily pujas. He has discretion to use the surplus for spiritual objects, and that discretion is unfettered so long as the surplus is not diverted to any immoral purpose.........He can accumulate the income........ and has absolute right over *padakanikas* or gift of property made

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—vide A. R. Malhotra, *The Constitution of India*, Bombay, 1951 (1951 Edition) pp. 111, 114, 147, 148, 149 and 150.

4. (1952) 1 M.L.J., pp. 565–566.

5. *Ibid.*, p. 567.

as a personal gift to him. If any specific property is vested in him as a trustee......to that extent he is trustee. In other respects he is not liable to account for the income. He is a person with manifold rights and duties.........a spiritual head, a teacher, a *Guru.* He has to carry on the worship of the deity installed in the Math and propagate the views of the religion of the institution. Such institutions are autonomous bodies governed and controlled by the directions and orders of the head of the Math.........He has the beneficial ownership of the properties and while in respect of some of the properties he may be manager. No doubt the management of the properties has a secular aspect, but the secular and religious aspects cannot be dissociated as they are inextricably mixed up when once it is established that the properties and income are at the disposal of the Swami for the sole and exclusive purpose of the spiritual welfare of himself and his disciples."[6]

In the light of the above comments the Hon'ble Judges concluded:

1. "Since the *Matadhipati* has a beneficial interest in the property and its income, such rights are 'property' within the meaning of Art. 19(1) (f) of the Constitution."[7]

2. "Since the Math is a centre of theological learning, established to propagate a particular system of philosophy or religion, it has the right of freely practising and propagating religion, as guaranteed by the Article 25."[8]

3. "Since a Math has a cult and property, it has to manage the religious and secular affairs of a particular denomination. As such it enjoys the right guaranteed by Article 26."[9]

This decision invalidated some of the sections of the Madras Act XIX of 1951, on the ground that they contravened Articles 19 (1) (f), 25, 26 and 27 of the Constitution. The offending Sec-

6. (1952) 1 M.L.J., p. 571.
7. *Ibid.*
8. (1952) 1 M.L.J., pp. 571-72.
9. *Ibid.*

tions were, 20, 21, 23, 24, 25 (a), 26, 28, 29 (2), 30, 31, 53, 54, 55 (2), 56, 58 (3), 59, 63 to 69 in Chapter VI, 70 (2), (3), (4), 76, 89, 99. The decision placed the *maths* practically outside the scope of the Act.

The above sections group themselves into various divisions according to the nature of repugnancy.

I. Sections 20, 21, 23, 24, 54, 55 were declared *ultra vires* on the ground that they contravened Article 25 of the Constitution. These Sections related to the powers of the Commissioner. According to Section 20, he had the controlling and supervisory powers over the administration of all (Hindu) religious endowments. Section 21 empowered him, the Deputy Commissioner, the Assistant Commissioner and any officer authorized by the Commissioner to enter a religious institution. Section 23 required all the trustees to obey orders issued under the Act. Section 24 described the powers of the trustee and the care required of him in the management of the religious institution. Section 54 required the trustee of a *math* to submit proposals to the Commissioner for fixing the standard scale of expenditure or *Dittam*, and under Section 55 (2) the trustee of a *math* was required to keep all accounts of the receipt and expenditure of all the '*pathakanikas*' and to produce them before the Commissioner or any officer authorised by him, if so required.

The Hon'ble Judges opined that "all these provisions vest very wide powers in the Commissioner, whereby the holiness and the sanctity of the institution could be destroyed."[10] They also believed that such vast powers would possibily being misused. They observed " that the provisions may be abused, is not based merely on speculation and imagination but on facts, is made clear by the instructions issued by the Board under the earlier Act.........In a memorandum dated 18th October 1945, the *Matadhipati* of Deviyoor Math was asked to state whether the Board's sanction was obtained to present *japamala* to a devotee and a silver *kalasa* to a Swamiar. It turned out that *japamala*

10. (1952) 1 M.L.J., p. 572.

was actually given to a doctor who treated the Swamiar free of charge and the silver kalasa was purchased by the *Mutt* and was not given to any body......By order of 17th October, 1949, the *Matadhipati* was prevented from presenting clothes and gratuities out of the *Mutt* funds to servants on Deevali day...... Instructions on 13th March, 1949......that food charges have increased......expenditure on rituals and festivals should be reduced to minimum.........on 28th October, 1950......that surplus funds should be utilized for the support of the *Balamandir*......a purpose wholly foreign to the objects of the institution, etc.......... These are instances of the possible 'lawful' orders that may be issued by the Commissioner and which the trustees, in whatever form the orders may be clothed, are bound to treat as obligatory, in order to avoid the displeasure of the Commissioner......... These Sections of the Act therefore are instances of infringement of the right under Article 25......the right to freely practise and propagate religion......are therefore *ultra vires* the State Legislature."[11]

II. Sections 25 (4), 26, 28, 29 (2), 70 (2) (3) (4), were held unconstitutional on the ground that they contravened Article 26 which gave religious denomination the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs on matters of religion, to own and acquire movable and immovable property and to administer its property in accordance with law.

According to Section 25 (4) the *Matadhipati* had to submit the register describing the properties, possessions etc., of the *math* to the Commissioner or to the Assistant Commissioner. The Commissioner could make alterations and according to the court this power did "which seriously affect the right guaranteed by Article 26.........the right of managing the religious and secular affairs of religious institutions......*Mutt.* The provision therefore is *ultra vires* the State Legislature because it contravenes Article 26."[12] Section 26 empowered the Assistant Commissioner to verify the register and make alterations, etc. The Judges held "to the

11. (1952) 1 M.L.J., p. 557.

12. *Ibid.*

extent that Section 25 (4) is made applicable. Section 26.........is *ultra vires* the Legislature because it contravenes the Article 26 of the Constitution."[13]

Section 28 authorised the Commissioner or any officer or other person authorised by the Commissioner to inspect all movable and immovable property belonging to the institution and all records, correspondence, etc. This power too, was held, "though it sounds innocuous, is liable to abuse, and it is *ultra vires* the State Legislature in as far as it relates to *Mutts*.[14]

Section 29 required the trustees of the temples and *maths* to obtain the sanction of the Commissioner for the alienation of properties. The Judges held that the "*Matadhipaties*" right to managing, of alienating property in the interest of the *Mutt* and for its benefit......is seriously affected by Section 29......therefore is *ultra vires* the State Legislature because it contravenes Article 26 ......*Matadhipati* has life interest over the corpus but over the income derived from several sources he has full powers of disposition limited by the objects of the institution. Corpus (immovable property) can be alienated only for the purposes of the institution ......for its necessity and benefit.

By Section 29, the *Matadhipatis*' right is infringed."[15] Section 70 (2), (3), (4) requiring the trustee to keep proper accounts and submit them to the Commissioner, was also held to contravene Article 26.

III. Sections 30 (2), 31, 54, 55, 56, 58 (3), 63 to 69 were held to be *ultra vires* the State Legislature on the ground that they contravened Article 19 (1) (f) and could not be saved by Article

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13. (1952) 1 M.L.J., p. 557.

14. *Ibid.*

15. *Ibid.*

16. Article 19 (5): Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-

19 (5).[16] Article 19 (1) (f) guarantees the fundamental right to acquire, hold and dispose of property, while Article 19 (5) imposes reasonable restrictions in the interest of the general public. Section 30 authorised the trustees of institutions attracting a large number of pilgrims or worshippers from outside to incur expenses in making the necessary sanitary and other arrangements on the occasion of any fairs and festivals. And sub-section (2) was intended as a safeguard against any undue or extravagant diversion of trust funds for such purpose by a trustee. Section so far as it related to the *math.* was held *ultra vires* the State Legislature on the ground that the safeguard intended, abridged the discretionary powers of the *Matadhipati*......"The voice of the *Matadhipati* is not final"......in respect of the income of the trust property. "These and other restrictions, are neither reasonable nor required in the interest of the general public, so as to be saved by Article 19 (5) of the Constitution, and therefore the fundamental rights guaranteed under Article 19 (1) (f) are violated."[17]

According to Section 31, the trustee, after fulfilling the conditions as laid down in Sections 30 (1) and 70 (2) with previous permission of the Deputy Commissioner could apply the surplus funds to the purposes specified in Section 59 (1). This Section was declared *ultra vires* the State Legislature for wrongly applying the doctrine of *Cypres* and thus contravening Article 19 (1) (f).

Sections 54 and 55, as described earlier, related to the submission of proposals for fixing the *Dittam* to the Commissioner and production of the accounts and the receipts and expenditure of *pathakanikas* to the Commissioner. The order of the Government was final on these matters. The Sections were held *ultra vires* the State Legislature on the ground that they "seriously affect the *Matadhipati's* right to manage the affairs and practically reduces the *Matadhipati* to a status of a servant—under the law he has the use of temple funds......the discretionary right is taken

clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe......vide A., R. Malhotra, *The Constitution of India,* (1951) p. 115.

17. (1952) 1 M.L.J., p. 557.

away leaving the *Matadhipati* crippled...........and his customary obligation of feeding the Brahmins for which he may even incur debt, and cutting down of the expenditure purely from secular point of view...........is not to view the matter in proper perspective...... The power to hold under Article 19 (1) (f) carries with it the power to enjoy and utilize the income under law. This power is abridged by Section 54 which is therefore *ultra vires* the State Legislature......"[18] The Section 55 was invalidated on the ground that "the restrictions imposed are so drastic in scope that they go beyond the object sought to be achieved and therefore are not reasonable restrictions to be saved by Article 19 (5)."[19]

Both Sections 56 and 58 (3) were considered serious infringements of the fundamental right guaranteed to the *Matadhipati.* According to Section 56, the *Matadhipati* was required by the Commissioner, if the latter thought necessary, to appoint a manager to administer the secular affairs of the *math* and if the *Matadhipati* failed, to do so the Commissioner could appoint one. Section 58 (3) authorised the Deputy Commissioner to frame scheme for the *maths* and appoint Executive Officer for the administration of the secular affairs. The court held both the Sections 56 and 58 (3) as *ultra vires,* contravening the Article 19 (1) (f). While giving their decision their Lordships observed, "Regarding the management of the properties, it is open under the Act to the Commissioner to require and insist that Swamiji should appoint a manager, and in default power is given to the Commissioner himself to appoint one. A person is entitled to manage his own property as its incident. There are two other ways in which this right of the *Matadhipati* to manage his properties can be taken away under the Act. One is an attempt to frame a scheme......a second one and more dangerous one, viz., the power of notification by which without any remedy in the way of judicial review the Executive is empowered to take the drastic step of depriving a *Matadhipati* of his right to manage

18. (1952) 1 M.L.J., p. 557.
19. *Ibid.*

his own affairs...... These modes practically leave nothing to the *Matadhipati* except a vestige of a right to call himself a *Matadhipati*, with no power to manage the property, to deal with its income, to apply its surplus for the objects of the institution at his own discretion and choice, which is a right recognized and established by the decision of the highest tribunal which we have adverted to. It cannot be seriously approved and indeed, no decision in support of such a serious invasion of right has been placed before us. It may be suggested that with regard to the appointment of the manager or the Executive officer the notification procedure relate only to secular affairs of the *Mutt* and did not touch upon the religious aspect .... The separation of the religious affairs from secular affairs of a *Mutt* into such water-tight compartments is not possible. The properties of the *math* and its income exist for one purpose .... and that is a religious purpose. It has to be applied and utilized for the maintenance of the *Mutt*, for carrying on worship and for the propagation of religion. It is not really a question of leasing the lands and realising and paying the income into the hands of the head; but extends to the receipt of the income and the disbursement thereof over which practically the *Matadhipati* has no control .... His hands, with reference to the property, are tied completely. It does not stop at merely.........preparing the budget ....but goes further and seizes the management itself into the hands of the Government through their appointed agent. It cannot therefore be seriously contended that the restriction so imposed are reasonable and that they are required in the interests of the general public." [20]

Additional checks to the trustee's power were provided by Sections 63 to 69 empowering the Government to notify the *maths*, when recommended by the Commissioner. These Sections were declared *ultra vires* on the ground that they denied the *Matadhipati* the right to manage his own property leaving him with merely the shadow of power and taking away its substance. The right granted under Article 19 (1) (f) was contravened and could not

20. (1952) 1 M.L.J., p. 557.

be saved by Article 19 (5) because the restrictions were not reasonable.

IV. Section 53 empowered the Commissioner to make an interim arrangement in case of a vacancy to the post of trustee. The Judges held that the Commissioner did not need such drastic powers and that the Court could meet any exigency arising out of disputed succession to the post. The Section, therefore, was held *ultra vires* the State Legislature.

According to Section 75 the Hindu institutions were required to pay 5 percent of their income to the Commissioner. The petitioner contended that this was an additional "tax" and the respondent argued that it was only "fee". Their Lordships upheld the contention of the petitioner because it had all the characteristics of tax, such as, uniformity.........since 5 percent of the income was collected from all institutions......its compulsory character and the fact that it bore no relation to the services rendered. As a tax it contravened Article 27.

Section 86 subjecting the trustees to a penalty for refusing to comply with the orders of the Commissioner was held *ultra vires* the State Legislature.

Governments had the power under Section 99, to call for records, etc., so far as it related to *maths*, was denied and the section declared *ultra vires* the State Legislature.

The High Court of Judicature at Madras made four important conclusions:

1. That the *Matadhipati* possesses certain well-defined rights with respect to the institution and its endowments which could be regarded as rights to property within the meaning of the Article 19 (1) (f) of the Constitution. The provisions of the Act in so far as they take away or unduly curtail the power to exercise this right are not reasonable restrictions within the meaning of the Article 19 (5) and must consequently be held invalid.

2. That the *Matadhipati* as the head and representative of a religious institution has a right under Article 25 of the Constitution

to practise and propagate freely the religion of which he and his followers profess to be adherents. This right should not be affected by the provisions of the Act.

3. That *math* in question constitutes a religious denomination and as such enjoys a fundamental right to manage its own affairs in matters of religion through the *Matadhipati.* Hence the provisions which substantially take away the rights of the *Matadhipati* amount to violation of a fundamental right under Article 26.

4. That the contribution collected by the HRCE Department was not a fee as contended, but a "tax" and therefore contravened Article 27.

The Madras High Court's decision in the Shirur Math Case set a firm precedent until the Supreme Court of India reversed some of its rulings.

The provisions of the HRCE Act were challenged in another important case. *Marimuthu Dikshithar representing the Poddu Dikshithars of Sri Sabhanayagar Temple, Chidambaram* Vs *The State of Madras represented by the Secretary to the Government, Rural Welfare Department, Madras.*[21]

The Poddu Dikshithars of Chidambaram are also a close knit community of about 250 families, numbering 1500 members. Every male member of the community is a manager as well as *Archaka* of the Sabanayagar temple, which they claim as their own. The Government notified the temple under Section 63 on the ground that it was being mismanaged. The Poddu Dikhithars appealed to the High Court of Judicature at Madras against this order of notification on the ground that they were a religious denominations and that the temple belonged to them. The High Court of Judicature at Madras observed, "the Poddu Dikshithars are both managers and *Archakas* and as such they have a substantial beneficial interest in the income.........they are collectively and individually entitled to the beneficial interest in the offerings made

21. (1952) 1 M.L.J., p. 597.

to God...... Besides the Poddu Dikshithars, who are Smartha Brahmins constitute a close religious denomination and their rights and privileges have been recognized for over centuries.[22] In the light of the above observation the Judges held, "If the manager, *Dharmakurta* of a temple has a beneficial interest in the property and its income, such rights are 'property' within the meaning of Article 19(1)(f) of the Constitution......the Poddu Dikshithars who are citizens of India, have such individual proprietory rights and notification of their temple under Section 63 of the HRE Act infringes their proprietory right and therefore contravenes Article 19(1)(f)...... The notification is also an unreasonable restriction on their right to acquire, hold and dispose of property and cannot be justified by Article 19(5)...... The Poddu Dikshithars who are Smartha Brahmins constitute a close religious denomination and the procedure of notification undoubtedly interferes with the right to manage affairs in matters of religion, to own and acquire property within the meaning of Article 26...... The right to contribution under Section 76 is unconstitutional because it contravenes Article 27."[23]

Similarly the Gowd Saraswath Brahmins of South Kanara in their capacity as a religious denomination applied for a writ directing the State to refrain from recourse to any of the provisions of the Act of 1951 against the Mulki Venkataramana Temple under their management.

In the light of the various considerations and decisions arrived at by the High Court in the Shirur Math Case it was held in *Devaraja Shenoy* Vs *State af Madras by Secretary, Legal Department* that, "all the provisions of the impugned Act in so far as they affect the autonomy or the exclusive control of a religious denomination should not be enforced, including the provisions relating to notification procedure under Section 38 of the Act......... The Act is *ultra vires* the State Legislature in so far as it is sought to apply it to trustees of the religious denomination that

22. (1952) 1 M.L.J., p. 597.

23. *Ibid.*

owned the temple."[24] The levy of contribution from the temple under Section 76 in so far as it contravened Article 27 of the Constitution was held illegal.

The decision relating to the collection of levy under Section 76 in the Shirur Math Case was adverted to again in another case—viz., *Nagappa Chettiar* Vs *The HRCE Department.* The question here was whether the decision was applicable to denominational institutions alone or whether it applied to temples and specific endowments also. The Lower Court had ruled that the decision of the High Court in Shirur Math Case applied to *maths* alone and not to temples. The High Court on appeal overruled the judgement and held that "Section 76 had been declared by the Supreme Court to be *ultra vires* on ground which apply to a temple as much as to a *math* or other kind of religious endowment. It is obvious that the effect of the Supreme Court decision is to deprive the Commissioner, HRE of the power conferred by Section 76 to levy contribution. This contribution cannot be levied under Section 76 even in the case of temples."[25]

The HRCE Act of 1951 was challenged from another angle in *Narayanan Nambudripad* Vs *State of Madras.*[26] It was contended here that the Act was an unconstitutional interference in the matter of religion and therefore was void, and that it interfered with the Fundamental Right to property of the hereditory trustees as guaranteed under Article 19 (1) (f) and that the Act was discriminatory in character in singling out the Hindu community and therefore violating Article 14.

Replying to the first contention the High Court of Judicature at Madras held that the Indian Constitution had not adopted the American view that the State should have nothing whatever to do with religious institutions and endowments. This view creates a steel wall of separation between the Church and State. In India

24. (1952) 2 M.L.J. p. 481.

25. (1955) 1 M.L.J. p. 177.

26. (1953) 2 M.L.J. p. 699, (1955) Mad. 356 (54) A.M. 385.

while there is separation between the Church and State it is not a complete one.

That "there is a separation between Church and State in India is apparent from the existence of two important prohibitions against the State interfering with religion. These are:

1. No person should be compelled to pay taxes the proceeds of which were specifically appropriated to the promotion and maintenance of any particular religion or religious denomination-Article 27.

2. No religious instruction should be imparted in the educational institution maintained by the State."[27] Their Lordships emphasized that "apart from these, there is no general prohibition against State legislation in respect of religion."[28]

On the separation between Church and State according to the Indian Constitution, their Lordships observed that there were provisions in our Constitution which were inconsistent with the theory that there should be a wall of separation between Church and State. In this connection they referred to Article 16 (5)[29] which recognizes the validity of laws relating to management of religious and denominational institutions; and Article 28 (2)[30] which contemplates the State managing educational institutions founded by an endowment and where religious instruction is provided.

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27. (1953) 2 M.L.J. p, 699.

28. *Ibid.*

29. "Article 16 (5): Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person prefessing a particular religion or belonging to a particular denomination.........vide A, R. Malhotra, *The Constitution of India* (1951 Edition) p. 113.

30. "Aricle 28 (2): Nothing in clause (I) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution."......vide A. R. Malhotra, *The Constitution of India* (1951 Edition) p. 149.

Further in the Concurrent List of the Seventh Schedule entry No. 28 is as follows: "Charities and Charitable Institutions, Charitable and Religious endowments and religious institutions and both Union and State Legislature can legislate."[31] Explaining this point further the Judges observed that any religion had two aspects, the private and the public. The former applied to the doctrine and ritualistic aspects of the religion and the latter to the administration of properties endowed to religious institutions. The first aspect they said, was saved by Articles 25 and 26, though "the Government might impose control even within the area covered by the Articles 25 and 26 if required in the interest of public order, morality or health."[32] Narayan Nambudripad's plea against the Act of 1951 was rejected on the grounds that it was not an interference of the State in matters of religion.

Replying to the other contention that the Act violated Article 14 as it singled out Hindu Religious Endowments for special treatment, the Hon'ble Judges adverted to Shirur Math Case and stated that "the State Legislature is quite competent to take any matter piecemeal as the conditions and exigencies of the time demanded."[33]

As to third question whether hereditary trusteeship too, was property within the meaning of Article 19 (1) (f) the Court observed, "in the Shirur Math case it was held that the property in Article 19 (1) (f) was of wide import and it had sufficient scope to include the hereditary trusteeship. The fact that trustees have no right to participate in the income from endowment or its emoluments is not a ground for holding that it is not property for purposes of Article 19 (1) (f)......... In the result the provision in the scheme, in so far as they encroach upon the right of the petitioner as hereditary trustees, are void under Article 19 (1) (f)."[34]

31. (1953) 2 M.L.J. p. 699.

32. (1953) 2 M.L.J. p. 699, (1955) Mad. 356.

33. *Ibid.*

34. (1953) 2 M.L.I. p. 699.

A section 87 of the Act of 1951 was challenged on the ground that it violated the principle of natural justice. Its purpose was to put the new trustee or executive officer in possession of the properties of the endowments. This scheme was challenged in *Prattipati Dandiah* Vs *Venkatarama Dikshtaloo*[85] and *Narasu Seetha* Vs *Bhaskaranayana*.[86] In both the cases the petitioner contended that the Magistrate under the provisions of this Section was not required to issue notice to all the parties concerned before making his order and that this contravened the principles of natural justice. The High Court supported the contention of the petitioner on the ground that "many circumstances can be imagined where it would be necessary for the aggrieved party to explain his position, for example, if the certificate is a forgery, the petitioner may not be the real person appointed by the Commissioner as trustee."[87] And therefore "such order" was held to be against the elementary principles of natural justice which have to be observed in all judicial proceedings."[88]

The result of these decisions of the Madras High Court was that the denominational institutions like *maths*, temples and other institutions whose trustees were hereditary were practically left outside the scope of the Act. The Commissioner could not exercise his power of control or directly manage them without violating Articles 25 and 26. The properties of these institutions were to be property within the meaning of Article 19 (1) (f) and thus beyond control or deprivation. The High Court of Judicature also gave a liberal interpretation to the clauses in Article 19 (5) by which many of the "restrictions" were declared unreasonable and the institutions affected placed beyond the scope of the Act. And through such decisions the Court did attempt to establish a separation between the State and denominational institutions.

35. (1953) 2 M.L.J. p. 550.

36. (1954) 2 M.L.J. p. 227.

37. (1953) 2 M.L.J. p. 550.

38. (1954) 1 M.L.J. p. 227.

The right of the State to legislate could not be disputed, nor the effort of the State at piecemeal legislation. Conditions and exigencies of the time justify such legislation.

The idea of control by State of religion was interpreted anew. The State has no control over the doctrinaire and the ritualistic side of religion but can control the administration of properties of the religious institutions. Even here the properties of religious denominational institutions could not be controlled.

The view of the High Court paralled to some extent supported the views of those who had opposed the control of *maths* by the State and given evidence to the effect before the Joint Select Committee. The Press and the Opposition on the floor of the House had likewise held the same view.

The decision of the High Court of Judicature at Madras in the Shirur Math case was challenged in the Supreme Court of India in the *Commissioner of HRE, Madras* Vs *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Math.*[39]

In their decision Judges of the Supreme Court made important observations in respect of the office of the *Matadhipati,* his rights and duties and his status. According to them:

1. The *Matadhipati* has certain proprietory rights. He is not a mere manager and it is wrong to describe the *Matadhipati* as an office. The superior of the *math* has not only duties to discharge in connection with endowments but has also personal interest of a beneficial character which has been sanctioned by custom and is much larger than that of a Shebait. It was held by the Judicial Committee (Privy Council) in *Ganesh* Vs *Lal Bihary*[40] that Shebaitship itself is property. What was said in that case in respect rights of the Shebaitship could with equal propriety be applied to the office of *Mahant.* The ingredients of both office and property, of duties and personal interest are blended

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39. S.C.J. 1954, Vol. XVII, p. 335, (1954) S.C.R. 1005, 154, A.S.C. 282, A.I.R. 1954, S.C. 282.

40. (1936) 1 M.L.J. p. 86.

together in the rights of the *Mahant* and the Mahant has the right to enjoy the property with beneficial interest.........

2. It is true that the beneficial interest is appurtenant to his duties and as he is in charge of a public institution he can be subjected to restrictions.

3. He is the head and superior of a spiritual fraternity and the purpose of the *math* is to encourage and foster spiritual training by the maintenance of a competent line of teachers, who can impart religious instruction to disciples. The purpose cannot be served if restrictions are such as would bring the *Matadhipatis* down to the level of a servant under a State department.

4. Whether 'person' in Article 25 means individuals only or includes corporal bodies as well......... The *Matadhipati* is not a corporate body. The institution as such cannot propagate religion. It can be done only by an individual person. And whether the individual propagate their personal view or the tenets for which the institution stands, is immaterial."[41]

The Supreme Court confirmed the decision of the High Court in respect of some provisions of the impugned Act, and cancelled the latter's decision in respect of other provisions. The Supreme Court confirmed the interpretation of the High Court of Madras the following Sections:

Section 21 empowering the Commissioner and his subordinates to enter the premises of any religious institution, for the purpose of exercising any of the powers confirmed,.........was held unconstitutional on the ground that "there cannot be such unregulated and unrestricted right of entry in a public temple or other religious institution for persons who are not connected with the spiritual functions thereof. The Section interferes with the Fundamental Rights of the *Matadhipati* and the denomination of which he is the head, guaranteed under Article 25 and 26 of the Constitution. Section 21.........is invalid.[42]

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41. S.C.J. 1954; Vol. XVII, p. 335.
42. *Ibid.*

Sections 30 (2) and 31 required that the trustee should be guided by such general or special instruction as the Commissioner or Deputy Commissioner or the Area Committee might give for incurring expenditure out of the funds in his charge. The Judges observed, "if the trustee is to be guided and not fettered, no objection could possibly be taken. But if he is bound to carry out the instructions, it constitutes an encroachment on his right. These restrictions are unreasonable and cannot be justified by Article 19 (5) of the Constitution. The Section is invalid."[43]

Section 55 (1) (2) related to the power of spending the '*pathakanikas*'. The Hon'ble Judges held, "the *pathakanikas* are the gifts given to the *Matadhipati* and constitute his property. To expect him to spend them only for the purposes of the *math* or to keep account of his receipts and expenditure of such personal gifts.........is to constitute an encroachment on the property of the *Matadhipati* as guaranteed by Article 19 (1) (f). This unwarranted restriction therefore cannot be justified by Article 19 (5)."[44]

Section 56 related to the appointment of a manager for the administration of secular affairs of the *math*. The Hon'ble Judges held, "the effect of the Section.........is really that the Commissioner is at liberty to deprive the *Matadhipati* of his right to administer the trust property even if there is no negligence on his part. The Provisions therefore are too drastic and contravene Article 26 (2) of the Constitution. The Section is invalid."[45]

Sections 63 to 69 related to the notification of religious institutions. It was held that, "the provisions are extremely drastic ....worst feature is that no access is allowed to the Court to set aside an order of notification .... this therefore conflicts with the Fundamental Rights of the *Matadhipatis* and is therefore *ultra vires*."[46]

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43. S.C.J. 1954, Vol. XVII, p. 335.

44. *Ibid.*

45. *Ibid.*

46. *Ibid.*

Section 76 required the religious institutions to pay a contribution of 5 percent of their income to the Government. The Supreme Court held the contribution as 'tax' and not a 'fee' on the ground that "the contribution is collected according to the capacity of the payer and not according to the *quantum* of benefit accruing to him ...... and these institutions classed under lower income groups are excluded from the payment of charges under Section 76 (2). These are the characteristics of tax and bear resemblance to income tax .... and the most material fact which negatives the theory of tax, is that the money raised by the levy of contribution was not ear-marked or specified for defraying the expenses that the Government had to incur in performing the services........... All the collections go to the Consolidated Funds of the State and all expenses have to be met not out of these collections but out of the general revenues by the proper method of appropriation as is done in the case of other Government expenses."[47] The Judges continued "there is total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution under the provisions of Section 76 and under these circumstances the theory of a return or counter-payment or *quid pro quo* cannot have any possible application to this case."[48] The contribution was declared a 'tax' contravering Art. 27 and thus, held to be beyond the competence of the State Legislature to enact it.

However the Supreme Court held certain Sections as valid thus overturning the judgement of the High Court of Judicature at Madras.

Section 20 related to the power of the Commissioner to pass an order for the proper administration and for the due appropriation of the properties of endowments. The Judges of the Supreme Court upheld the Section on the ground that the position of the *Matadhipathi* was that of a trustee of a *math*........ a public institution, and that some amount of control or supervision over

47. S.C.J. 1954, Vol. XVII, p. 335.

48. *Ibid.*

the due administration of the endowments......... was certainly necessary in the interest of public......... Any apprehension that the power conferred by this Section might be abused in individual cases did not of itself make the provision unnecessary or invalid n law.[49]

Section 23 required the trustee to obey all lawful orders of the Commission and Section 24 laid down the standard of care required of the trustee. The Supreme Court observed, "No exception can be taken to the Section if these provisions of the Act which offend the fundamental rights of the *Matadhipati* are left out of account as being invalid.[50]

Regarding Section 25 (4): The Supreme Court held, "If the preparation of registers for religious institutions is not wrong and does not affect the fundamental rights of the Mahant, one fails see how the directions for addition to or alterations of entries in such registers which clause 4 contemplates and which are necessary as a result of enquiries made under clause (3), can in any sense be held to be invalid......... The enquiry that is contemplated by clause (3) and (4) is an enquiry into the actual state of affairs and the whole object of the Section is to keep an accurate record of the particulars specified in it.[51]

For the same reasons as above, Section 26 which provided for the annual verification of the registers, was held valid.

Section 28 was held valid on the ground that the mere possibility of the power of inspection of documents being misused by the Commissioner was not enough ground to freat it as invalid. Similarly, the provisions of Section 29 (2) which enabled the Commissioner to impose conditions while granting permission for the alienation of endowed property were held reasonable.

Referring to Section 53—the Supreme Court observed that the Section could not be held as invalid merely on the ground

49. S.C.J. 1954, Vol. XVII, p. 335.

50. *Ibid.*

51. *Ibid.*

that the Courts had ample jurisdiction to provide for the contingencies........."that surely cannot prevent a competent legislature from legislating on a topic provided it can do so without violating any of the Fundamental Rights........."[52] Similarly the Supreme Court did not find fault with Section 54 which provided for fixing of the standard scale of expenditure.

Section 58 which related to the framing of a scheme by the Deputy Commissioner, was also held valid by the Supreme Court on the ground that there were ample safeguards against wrong decision such as Section 61 which provided for appeal to the Commissioner and to the High Court.

Section 59 enabled the Deputy Commissioner to divert surplus finds and since the Deputy Commissioner merely had to make a choice of one of the several heads enumerated, there was nothing unconstitutional about the Section. Besides, there was an appeal to the Commissioner against his decision of the Deputy Commissioner.

Section 70 related to the framing of budget and empowered the Commissioner and Area Committee to make alterations. Since there was appeal against this order, the Section was not invalid.

The Supreme Court decision led to certain important conclu sions which would be examined in the concluding paragraphs. These conclusions were considerably strengthened by the following two cases.

The allied cases

In the *Mahant Sri Jaganath Ramanuj Dass* Vs *The State of Orissa* the Supreme Court held certain Sections of the Orissa HRE Act (Act IV of 1932) to be *ultra vires* the State Legislature.

Sections 38 and 39 provided for settling a scheme refering to religious institutions by an Executive Officer without the intervention of any judicial tribunal. "This" the Supreme Court

52. S.C.J. 1954, Vol. XVII, p. 335.

held, "amounts to an unreasonable restriction upon the property right of the superior of the religious institution which are involved in his office.........and therefore contravenes Article 19 (1) (f) and cannot be justified by Article 19 (5)."[53]

The directions which the HRE Commissioner could give to the *Mahant* for spending the surplus funds of the institution were considered "unreasonable restrictions on the discretionary powers of the trustee and therefore invalid."[54] *In Ratilal Panachand Gandhi* Vs *The State of Bombay*, the provisions of the Sections of the Bombay Trust Act which threatened to encroach on the liberty of a religious denomination were declared invalid. The Section 44 of the Bombay Trust Act of 1950, providing for the appointment by the Court of Charity Commissioner as a trustee of a religious trust, and clauses (3) to (6) providing for his appointment as a trustee of religious trusts such as temples and *maths*, were held *ultra vires* the Constitution by the Supreme Court. The Hon'ble Judges observed, "If the Charity Commissioner were to be appointed as the head of the *math* in place of the *Matadhipati*, the result would be disastrous. The Section therefore is invalid as contravening Articles 25 and 26 of the Constitution."[55] Sections 55 (c) and 56 (1) of the same Act were also declared invalid.

A study of the judgements of the Supreme Court of India and the High Court of Judicature at Madras brings out important points of comparison and contrast.

Both the High Court and the Supreme Court have established that the *Matadhipati* is a head of a religious denomination or a "superior of a spiritual fraternity" and as such has claims to rights guaranteed under Articles 25 and 26.

In these rights were combined "the ingredients of both office and property, of duties and personal interest." As such the *Matadhipati* was entitled to enjoy certain rights in respect of his office and the properties of the institution, guaranteed under Articles

53. S.C.J. 1954, Vol. XVII, p. 329.

54. *Ibid.*

55. S.C.J. 1954, Vol. XVII, p. 480.

19 (1) (f), 25 and 26. The properties of the *math* were held to be properties within the meaning of Article 19 (1) (f).

Both the High Court and the Supreme Court agreed that the provisions of Section 21 (i.e., unregulated entry into religious institution), 30 (2) and 31 (whereby trustee was to be guided by special and general instructions from the Commissioner, Deputy Commissioner, etc., in expending the funds of the institution); Sections 55 (1) and (2) (the power of spending *pathakanikas* to be controlled); Section 56 (appointment of manager for the administration of secular affairs); Sections 63 to 69 (notification of religious institutions); and Section 76 (levy as tax) were invalid as they denied the *Matadhipati* the rights guaranteed under Articles 19 (1) (f), 25 and 26. Both the High Court and the Supreme Court thus gave wide scope to the freedom to be enjoyed by the superior of a religious denomination.

However the High Court and the Supreme Court differed over the question of the imposition of various types of "reasonable restrictions".

The following provisions of the Act were declared as 'unreasonable restrictions' on the powers of the *Matadhipati* by the High Court of Judicature at Madras:

1. The Power of the Commissioner to pass orders for the proper administration of the institution (Section 20).
2. Obedience to such orders (Section 23).
3. Standard care required of trustee (Section 24).
4. Preparation of register and Commissioner's power to issue directions for alteration (Section 25).
5. Annual verification of register (Section 26).
6. Inspection by Commissioner, etc. (Section 28).
7. Conditions for alienation of properties (Section 29).
8. Framing of schemes by Deputy Commissioner.
9. Diversion of funds by Deputy Commissioner to stipulated objects (Section 59).
10. Framing of budgets and making alterations (Section 70).

Thus the High Court gave liberal interpretation to the rights guaranteed by the Constitution. They also placed the religious institutions of denominational character beyond the scope of the State control in certain matters.

The Supreme Court however declared all the above provisions as 'reasonable restrictions' on the rights of the *Matadhipati*. It viewed only the restrictions placed on specific instances or conditions as 'unreasonable restriction' which could not be justified by Article 19(5). Thus, whereas the Commissioner's power to inspect the property and document of the institutions (Section 28) was a 'reasonable restriction', the power to enter a religious institution for the purpose of exercising any power conferred on the Commissioner or any one authorised by the Commissioner (Section 21) was interference with the Fundamental Rights of the *Matadhipati* and therefore invalid since it allowed entry even to those who were not connected with the religious institution. Again the framing of a budget and its submission to the Commissioner, and the latter's right to make alterations, etc. (Section 70) were quite proper, but not so, the general directions to the *Matadhipati* for incurring expenditure out of the funds in charge. Actual expenditure could not be controlled. Specific controls, the Court interpreted as 'unreasonable'. The Supreme Court thus permitted limited control of the religious institutions of denominational character which the High Court of Madras had not.

Both the Supreme Court and the High Court condemned the provisions relating to the notification of institutions, and the appointment of a manager thus preventing the Government taking over the direct administration of the religious institutions. During the course of his argument, even "the Advocate-General of Madras frankly stated that he could not support the legality of these provisions."[56] (i.e., Sections 63 to 69).

The effect of these two decisions was to limit the scope of State control of religious institutions of denominational character.

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56. S.C.J. 1954, Vol. XVII, p. 335.

Chapter XIII

AMENDMENTS TO THE ACT OF 1951 AND LEGAL AND CONSTITUTIONAL OBJECTIONS TO THEM

Within a period of five years of its enactment, the Madras Act XIX of 1951 had to be amended twice before it was replaced by more comprehensive legislation of 1959. It was as a result of judicial decisions in the Shirur Math case that the principal Act was amended in 1954 and it was replaced again as a result of the judicial decision in the Udipi Math case.

In the Shirur Math case, as stated earlier, Sections 21, 30(2), 31, 35, 56, 63 to 69 of HRE the Act of 1951 were declared *ultra vires* the State Legislature and Section 76(1) as beyond the competence of the State Legislature to legislate. It was to rectify the defects as pointed out by the Supreme Court and "to amend the Act conformably to the provisions of the Constitution"[1] that the Bill 27 of 1954 was framed.

The Supreme Court held that the Section 21 contravened Articles 25 and 26 on the ground that it provided a right of entry into any part of the religious institution including the *sanctum sanctorum*, without prior notice to the trustee and without any regard to the usages and customs of the institution. Clause 3 of the Bill aimed at substituting a new section for old Section 21. The new section aimed at providing for the notice being given to the trustee and for the due observance of the usage and practices of the institution by the officer making an entry. The incidental amendment enabled the Commissioner to nominate any servant including the *Archaka* of a religious institution to make an entry into any part of a *math* or a temple including the *sanctum sanctorum*.

1. Fort St. George Gazette, Madras, dated May 14, 1954, Part IV-A, Extraordinary.

Clause 4 of the Bill added a sub-section to Section 23. It provided that the Commissioner, Deputy Commissioner or Assistant Commissioner would observe all the forms, ceremonies and usages appropriate to the religious institution or the *math* concerned.

Section 30 (1) of the original Act empowered the trustee to spend the funds in his charge for securing health, etc. of the pilgrims. And Section 30 (2) required the trustee to be guided by such general and special instructions which the Commissioner would issue. The Supreme Court held that the Section placed unreasonable restriction on the Fundamental right of the *Matadhipati.* The clause 5 of the amending Bill tried to delete sub-section (2). However the Joint Select Committee did not agree to the deletion and substituted for the words "shall be guided", the words "the trustees shall have due regard to."[2] Thus the new Section entitled the trustee to spend the funds on certain items and, for the instructions issued by the Commissioner the trustee was to have 'due regard' to them.

Clause 6 of the Bill aimed at deleting the Section 31 of the Act and substituting it with a new one. According to the old Section a trustee could spend the surplus funds in his charge on the purposes specified in Section 59 (1). The Supreme Court held that the said Section placed a burden—some restriction upon the property right of the trustee sanctioned by usage and had in effect impaired his dignity and efficiency as the head of the institution. The amending Bill therefore tried to substitute a new section which empowered the Commissioner, after holding the necessary enquiry and after satisfying adequately the purpose of any institution and setting apart for repair, building etc., to authorise the utilization of any surplus funds towards "religious, educational and charitable purposes."[3] It was laid down that the Commissioner's order would be published and that there could be a suit against the order.

2. Madras Legislative Assembly Debates, dated 6th August. 1954, Vol. XVII, p. 41.

3. Fort St. George Gazette, Madras, dated May 14, 1954, Part IV-A, Extraordinary.

Clause 7 of the Bill added two sub-sections 31-A and 31-B to the Act. The former aimed at validating the past appropriations and the latter provided for the appeal against the order of the lower Court to the High Court.

By clause 8, a minor amendment to Section 34 was introduced where for the words, "who is dedicated to a temple", were substituted by "who is dedicated for the service in a temple."

Clause 9 of the Bill introduced a major amendment in Section 39 (2). According to the original provisions, the Commissioner could appoint non-hereditary trustees to the institution which had both hereditary and non-hereditary trustees, as and when vacancies occurred. By the clause 9 of the amending Bill, the Commissioner could appoint non-hereditary trustees only in case of mismanagement, and after holding inquiry and giving due notice to the hereditary trustees. The Joint Select Committee introduced a change. It decided to delete the provisions relating to reason and circumstances requiring the Commissioner to make appointment of non-hereditary trustees. It was laid down that the Commissioner was to make appointment and give reasons for his action. The Joint Select Committee also provided for an appeal against this to a Court.

Clause 10 introduced alterations in Section 52. The original Section had specified certain grounds for filing a suit for the removal of a trustee of a *math* or specific endowment. Clause 10 added a few more grounds. These were: (a) waste of funds, (b) adoption of devices to convert the income of the institution into *pathakanikas*, (c) leading a life inconsistent with the sanctity of the office.

The Joint Select committee deleted the sub-clause (c) and substituted "leading an immoral life or otherwise leading a life which is likely to bring the office of the head of a *math* into contempt."[4]

4. Madras Legislative Assembly Debates, dated 6th August, 1954, Vol. XVII, p. 42.

Clause 11 amended Section 55. The Supreme Court had held the above clause *ultra vires* the Constitution on the ground that the provisions requiring the head of the *math* to maintain accounts of the receipts and disbursement of the *Pathakanikas* and to spend them on purposes connected with the institution, contravened Article 19 (1) (f). The new provision required the head of the *math* to keep accounts of receipts (not of expenditure) and to spend it in a manner authorised by the usage of the institution.

Clause 12 of the Bill deleted Section 56. The old Section required the Commissioner to appoint a manager for the administration of secular affairs of the institution. In case of default he had to make the appointment himself. The Supreme Court held the section *ultra vires* the Constitution on the ground that it contravened Articles 25 and 26 and therefore clause 12 deleted the Section 56 from the original Act.

Clause 13 of the Bill related to Sections 63 to 69. The Sections provided for notification. The power was exercisable by the Commissioner who would report the matter to the Government and the latter would publish the letter of notification in the Fort St. George Gazette. The Commissioner would then appoint an executive officer. The Supreme Court held it as *ultra vires* on the ground that they were drastic in nature. Clause 13 introduced a new Section 62-A, which made Sections 63 to 69 inapplicable to *maths* and religious institutions which had hereditary trustees having beneficial interest in the income of the institution.

Clauses 16, 17, 19 introduced drafting amendments.

Clause 18, related to Section 76 (1). The original Section required the religious institutions to pay contribution not exceeding 5 percent to the Government for services rendered by the Government. The Supreme Court held it invalid and one of the grounds was that the contributions were a tax and beyond the competence of the State Legislature to legislate. By clause 17 the contributions had to be paid to the Commissioner. The clause 18 introduced three new Sections 80, 81, 82. They provided for the appointment of the Commissioner as corporation sole, and for-

mation of Madras Hindu Religious and Charitable Endowments Administration Fund to which the contributions collected under Section 76(1) were to be credited and for vesting the Fund in the Commissioner. Provision was also made for the validation of the funds already collected.

In his note of dissent Hon. Mr. K. Balasubramania Aiyer criticised the inclusion of new section in the amending Act. These clauses, he stated, were in nature of new proposals. Thus the clause 6, introduced a new Section 31 in place of the old and clause 18 substituted a new provision in place of the old Section 82. The new Section 31, according to Mr. Balasubramania Aiyer, "gives power to the Commissioner directly to decide that any surplus which is not required for the purpose of the institution may be appropriated to religious, educational, or charitable purposes."[5] He further commented, "according to the decision of the Supreme Court, in the case of the *math*, the *Matadhipati* had absolute power of disposal over the income of all the endowments and he can spend at his discretion such income for the purposes connected with the institution. The proposed action will fetter the discretion of the *Matadhipati* and vest it in the Commissioner......... There may be religious, educational and charitable purposes wholly unconnected with the object of the endowments. It is also not right to state that there can be a surplus which is not required for such purpose. The work to be done in connection with the promotion, propagation and practice of religion........ is so vast...... that it will be hardly right on the part of any Commissioner to come to a decision that there is a surplus which is not required for the purpose.........it is also not proper to give to the Commissioner such wide power and taking out of the trustees of these endowments the entire discretion to decide about it. The Section proceeds on a wholly unjustified faith in the officers of the Government and on equally unjustified distrust in the trustees of temples and heads of the *math*.........The whole Section is opposed

5. Report of the Joint Select Committee on the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1954 (L. A. Bill No. 27 of 1954) p. 14.

to the spirit of the Constitution specially Articles 25 and 26 which give the Fundamental Rights of religious autonomy to the various religious denominations in our country."[6] Mr. Aiyer also considered the new Section 82, validating the levy of contributions, collected so far, as illegal and one which in fact was tax.

Mr. Aiyer and T. Anantha Pai considered the keeping of records of receipts of the *pathakanikas* as unjust.

Mr. Aiyer stated that the amendment in Section 76 of substituting 'Commissioner' in place of 'Government' did not change the nature of contribution, and it was still a 'tax', because there was no ratio between the amount collected and the service rendered. In support of this he stated that under the Act II of 1927, 3 percent of the income of the institutions was collected and at the time of the abolition of the HRE Board, there was a saving of Rs. 40 lakhs. That only showed, argued Mr. Aiyer, that the contribution was in excess of service rendered and therefore a tax and not a fee. He was of the view that the levy should be 3 percent and not 5 percent.

Mr. Aiyer wanted the Chapter VI relating to notification of temples to be deleted. Since the Supreme Court had objected to Government undertaking the management of religious institutions, even temples should be beyond the scope of management by Government.

The Bill, after it was passed by the Madras Legislative Assembly, was introduced in the Legislative Council. Hon. Mr. T. M. Narayanaswami Pillai, former President of the HRE Board, supported the Bill and said the Government was within its competence to bring a legislation of this kind. He said that the Supreme Court had held Section 20, which permitted the Government to exercise supervisory powers, as *intra vires* the Constitution on the ground that the Government had right to see that those institutions including *maths*, were properly administered, that their

6. Report of the Joint Select Committee on the Madras Hindu Religious and Charitable Endowments (Amendment) Bill, 1954 (L. A. Bill No. 27 of 1934) pp. 14-15.

funds were properly appropriated, that such administration was in the interest of the public and that the *Matadhipati* was a trustee. Mr. Narayanaswami Pillai emphasised that "the policy enunciated by the legislation is quite right and legal."[7] The Bill after it was passed by both the chambers received the assent of the President on 22nd September, 1954.[8]

The object of the Act XXVII of 1954 was to rectify certain section of the Act XIX of 1951 which were held invalid by the Supreme Court. However this object seems to have been defeated. The Government merely changed the words, without going into the spirit of the decision given by the Supreme Court. The result was that the same amendments were challenged in the Udipi Math case in 1956 and important amendments introduced in Sections 21, 30 (2), 31, 76 (5) were again declared *ultra vires* the Constitution by the High Court of Judicature at Madras. The HRCE Department had to suspend the operation of these sections. It was the Act of 1959 which again tried to rectify the defects.

A minor amending act was passed in 1956. The main object of the Act of 1956 was to facilitate administration. According to the Chapter VI of the HRCE Act of 1951, the Government had the power to issue the order of notification of temples and *maths*. By the amending Act of 1954, the *maths* were excluded and so the temples alone could be notified. Acccording to Section 64 (4) every notification was to be in force for five years. And according to Section 103 (c) of the Act, the notification issued under the Act II of 1927 were to remain in force for another period of five years from the commencement of the Act of 1951, i.e., till 30th September, 1956. Mr. Parameswaran, Minister for Hindu Religious and Charitable Endowments stated that "since the notification of the institution has resulted in great improvement in its administration, in order to maintain the administration at the satisfactory level, it is necessary to keep

7. Madras Legislative Council Debates, dated 12th August, 1954, Vol. VIII, pp. 295–296.

8. Fort St. George Gazette, Madras dated September, 29, 1954 Part IV-B

the notifications in force beyond a period of five years wherever necessary."[9]

Criticising the Bill Mr. Narayanaswami Pillai challenged the legality of the clauses that sought to automatically extend the period of notification. He contended, that the Section 103(c) required that before notifying the temple an inquiry had to be made, and only if mismanagement was proved to exist in the institution was it to be notified. The principle was also recognized, said Mr. Narayanaswami Pillai, by the Court. But the Bill had failed to take note of the altered conditions in the temples and had merely extended the period of notification. Mr. B. Parameswaran gave an undertaking that the period would not be actually five years, but that since some of the temples were still not managed satisfactorily extension of notification was necessary.

The Hon'ble Mr. K. Venkataswami Naidu, was of the view that, "in these days of democracy and a certain amount of religious neutrality, we should...........encourage the restoration of notified temples to those who have been in charge of them before the notification.........".[10] The Bill was passed and placed on the Statute book as Madras Act (Amendment) IX of 1956.[11] The second amending Act seemed to a certain extent wrong in principle, since it gave the Department the power to extend the period of notification without resorting to the procedure of preliminary inquiry.

Though these two amending Acts had been passed, the need for a more comprehensive legislation was already being felt both by the HRCE Department and the Government. An attempt to fulfil the need was made in 1959.

9. Madras Legislative Assembly Debates, dated 4th April, 1956, Vol. XXXIII, p. 599.

10. Madras Legislative Assembly Debates, dated ~~4th April, 1956, Vol.~~ XXXIII, p. 600.

11. Fort St. George Gazette, Madras dated 9th May, 1956, Part IV-B, p. 25.

The Udipi Math Case

The Madras Act of 1954 had barely operated for two years when some of the amendments effected were challenged in a group of applications filed in the *Sudhindra Thirtha Swamiar* Vs *The Commissioner, Hindu Religious and Charitable Endowments*, more popularly known as the Udipi Math case. The Sections which were challenged were 21, 30 (2), 31, 75 (5), 52 (1) (f), 55, 76 (1) and (2), 80, 82. Of these Sections 21, 30 (2), 31, 75 (5) were held invalid and Sections 52 (1) (f), 55, 76 (1) and (2), 80 and 82 were held valid.

In the Shirur Math case, Section 21 of the principal Act (Act XIX of 1951) was declared *ultra vires* on the ground that it contravened Articles 25 and 26 of the Constitution. It was therefore substituted by a slightly amended Section 21 and a new Section 21-A by the Act XXVII (amendment) of 1954. Section 21 of the principal Act consisted of the following three sub-sections:

"21 (1). The Commissioner, Deputy Commissioner, Assistant Commissioner and other officers as may be authorised by the Commissioner or the Area Committee in this behalf shall have power to enter the premises of any religious institution or any place of worship for the purposes of exercising any power conferred, or discharging any duty imposed by or under this Act."[12]

The new sub-section as amended by the Act of 1954 stood as follows:

"21 (1) The Commissioner, Deputy Commissioner, Assistant Commissioner or such officers or servants of a religious institution as may be authorised by the Commissioner, Deputy Commissioner in this behalf, shall have power to enter the premises of any religious institution or any place of worship for the purpose of exercising any power conferred, or discharging any duty

12. Fort St. George Gazette. Madras dated 28th August, 1951: Part IV-B, Extraordinary.

imposed, by or under this Act."[13] Thus the only change effected in the sub-section (1) of the Section 21, was the addition of officers or servants of a religious institution authorized by the Commissioner, Deputy Commissioner, Assitant Commissioner to the list of persons entitled to enter the premises. The person authorized need not be the servant of the *math* which the officer sought to enter. He could be the servant of any religious institution.

In respect of the above Section (Section 21 (1) as amended) the High Court observed, "the trouble which would ensue by deputing a servant of a hated rival to help Commissioner could well be visualized. To widen the scope of a statutory power already held invalid by the Court does not help to establish the reasonableness of the restriction imposed by the clause (1) on the right of the *Matadhipati*"[14]

A substantial change was effected in the third sub-section, i.e., 21 (3). The original Section (according to the Act of 1951) stood as follows:

"21 (3). Nothing in this Section shall be deemed to authorise any person who is not a Hindu to enter the premises or place referred to in sub-section (1) or any part thereof."[15]

The amending Act of 1954 deleted the sub-section and in its place substituted the following:

"21 (3). In entering the premises of a religious institution or place of worship, the person authorized by or under the sub-section (1) or the police officer referred to in sub-section (2), shall, if practicable, give notice to the trustee and shall have due regard to the practices and usages of institution."[16]

13. Fort St. George Gazette, Madras dated 29th September, 1954, Part IV-B, pp. 141-148.

14. (1956) M. L. J., p. 536.

15. Fort St. George Gazette, Madras dated 28th August, 1951, Part IV-B, Extraordinary.

16. Fort St. George Gazette, Madras dated 29th September, 1954, Part IV-B, pp. 141-148.

In respect of the first half of the sub-section, i.e., the person authorised to enter, the Madras High Court of Judicature observed, "Clause (3) of the old Section would have prevented the police officer who is not a Hindu from entering the premises of the religious institution. Obviously Section 9 (where Hindus alone to be appointed Commissioner, etc.) cannot apply to a police officer. So if a person prevented from entering the premises of the *math* under the authority of clause (1) and clause (3) of Section 21, Section 9 does not furnish a complete statutory safeguard. However the difficulty of a non-Hindu entering the institution is got over by clause (3) of the new Section 21, which refers to the usage clause."[17] By 'usage' it was understood that non-Hindus would not be permitted. While in respect of the latter half of the sub-section (3) the Madras High Court observed, "What the amended Section 21 (3) provides for, is 'notice, if practicable'. The Act itself does not provide for any machinery to decide whether in a particular case notice is or was practicable. Thus in relation to *math*, the statutory condition 'if practicable' is nebulous and uncertain in the operation. Restriction ceases to be reasonable if its scope is uncertain. Where the statutory objection conflicts with the Fundamental Rights, obviously the former has to give way and the latter will prevail."[18] In the light of the above observations the High Court held, "We are clearly of the opinion that even after amendments, Section 21 constitutes unreasonable restrictions on the Fundamental Rights of the *Matadhipati* guaranteed by Articles 25, and 26, and this Section 21 falls within the mischief of Article 13 of the Constitution and it is therefore void."[19]

The amending Act of 1954 added the following new Section 21-A:

"21-A. The Commissioner, Deputy Commissioner, Assistant Commissioner, every member of an Area Committee and every other person exercising powers of superintendence or control under

17. (1956) 1 M. L. J., p. 537.

18. Ibid.

19. (1956) M. L. J., p. 537.

this Act, shall, so far as may be, observe forms and ceremonies appropriate to religious institutions in respect of which such powers are exercised and in the case of a *math*, act in conformity with the usages of the *math* in his dealings with the head of the *math*."[20]

The above new Section had a few apparent defects. Clause (1) of the amended Section 21 did mot include the members of the Area Committee, they were brought in by Section 21-A. Similarly the servants of the religious institutions who were not included in section 21 (1) were not included in Section 21-A. These sub-Sections were therefore contradictory in nature. The High Court observed that "Section 21-A does not help to decide the validity of Section 21."[21]

The above observation of the High Court were carried out in the Act of 1959. Thus, persons authorised to enter were the Commissioners, Deputy Commissioners, Assistant Commissioners and "such officers or servants of a religious institution.[22] These person were required to give "reasonable notice" to the trustee. The observations of the High Court that there was no machinery to decide whether a particular institution allowed the entry to certain places or not, was rectified by Section 24 (5) of the Act of 1959. According to this the Commissioner was given authority to decide after an enquiry into the usages and practices of the institution and an appeal was provided, to the Government against the decision of the Commissioner.

Another section which was challenged was Section 30 (2). According to the original Act (of 1951) the trustee of the *math* was required to be guided by such general and special instructions as the Commissioner might issue. In the Shirur Math Case it was held that Section 30 (2) was obscure. Under the law, the

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20. Fort St. George Gazette, Madras dated 29th Sept., 1954 Part IV-B, pp. 141-148.
21. (1956) 1 M. L. J., p. 537.
22. Fort St. George Gazette, Madras dated 29th September, 1959, Part, IV-B.
23. (1956) 1 M. L. J., p. 538.

Matadhipati had large powers of disposal over the surplus income and the only condition was that he could not spend anything for his personal use unconnected with the dignity of his office. But as the purposes specified in clauses (A) and (B) of Section 30 (1) were beneficial to the institution, there was no reason why in spite of the authority vested in the *Matadhipati*, he should still be compelled to act under the instructions of the Government officer. This the Court in the Shirur Math Case held it as unreasonable restriction. To get over this, the Act was amended by the amending Act of 1954. In the original Section it was laid down that the "*Matadhipati* shall be guided by" the instructions issued by the Commissioner. In the new Section 30 (2) the above words were substituted by "shall have due regard to". The amendment was not of great consequence and the spirit of the old clause was kept in tact by the new amendment. In respect of the amendment the High Court of Judicature at Madras observed that the old objections were not rectified and that Section 30 (2) remained as obscure as ever. They therefore held that "Section 30 (2) even as amended, constituted an unreasonable restriction. Designed as a fetter in the *Matadhipati's* power of disposal, Section 30 (2) as it *now stands amended (after 1954) has* to be struck down as void and unenforceable in its application to the *Matadhipati*".[28] This defect was rectified by Section 35 (2) of the Act of 1959 by exempting the application of this condition to *maths*.

"31 (1) If after making adequate provision for the purposes referred to in Section 70, sub-section (2), and also for the arrangements and the training referred to in Section 30, sub-section (1), there is surplus in the income of the institution, the trustee *thereof may*, with the previous sanction in writing of the Deputy Commissioner appropriate such surplus of any portion specified in Section 59, sub-section (1) ...." etc. The above Section applied only to the surplus of the annual income. The *Matadhipati* had the initiative for the utilisation of that surplus. He was empowered to apply to the Deputy Commissioner for permission to appropriate the surplus of annual income for any purpose mentioned in Section 59 (*1*) of the principal Act. In the Shirur Math

case the Court held" "One of the purposes mentioned in Section 59 (1) is the propagation of the religious tenets of the institution and it is not understood why sanction of Deputy Commissioner should be necessary for spending surplus income on this account, which is one of the primary duty of the *Mahant* to discharge. The Section therefore places burdensome restriction upon the property right of the *Mahant* which was sanctioned by usage."[24]

To get over the difficulty the original Section 31 was substituted by Sections 31, 31-A, 31-B. The new section stood as follows :

"31 (1) The Commissioner may after holding an inquiry in such manner as may be prescribed, by order, declare that after satisfying adequately the purpose of the religious institution and after setting apart a sufficient sum for the repair and renovation of buildings connected with the *math* or temple or the endowments attached thereto, there is a surplus which is not required for any such purpose, and may, by such order, direct that such surplus as is declared to be available, be appropriated to religious, educational or charitable purposes provided that, in case of a temple founded or maintained by a section of the Hindu community, the surplus as far as possible, be utilized for the benefit of the said section for the purpose mentioned above.

(2) It shall be competent to the Commissioner when giving a direction under the sub-section (1) to determine what portion of such surplus shall be retained as a reserve fund for the *math* or temple and to direct the remainder to be appropriated to the purposes specified in that sub-section.

(3) The Commissioner may, at any time, by order and in the manner provided in sub-section (1), modify or cancel an order passed under that sub-section.

(4) The order of the Commissioner under this section shall be published in the prescribed manner. The trustee or any other person having interest may, within six months of the date of such

24. S.C.J. 1954, Vol. XVII, p. 335.

publication, institute a suit in the Court to modify or set aside such order.

Subject to the result of such suit, and of the appeal if any under Section 31-B the order of the Commissioner shall be final,' binding on the trustee and all persons having interest.

(5) Any decision of the Court under this Section may, at any time, for sufficient cause, be modified or cancelled by the Court in a suit instituted by the Commissioner or the trustee or any person having interest but not otherwise.

31-A ... ...
31-B ... ..." [25]

There were certain important amendments in the various sub-sections. In sub-section (1) the reference to Section 59 (1) of the Act was omitted and a new clause substituted. The Madras High Court observed. "While Section 31 (1) of the Act of 1951 referred only to the surplus of the income, the amended section refers to even surplus accumulated by careful management and virtually whole of the surplus is placed at the disposal of the Commissioner, no doubt for religious and charitable purposes, etc., which purposes may not be connected with the *math* itself. The amended section in effect entirely divests the *Matadhipati* of his power of disposal of the income............Thus we find that even without the *Matadhipati* applying to the Commissioner for directions to utilize the surplus the Commissioner could now take the initiative and give directions for the utilization of the surplus." [26]

In the light of the above observations the Court held, "The Supreme Court pointed out in the Shirur Math case that the control imposed by the unamended Section 31 (1) over the comparatively unlimited power of disposal the *Matadhipati* had over the income of the *math* was in itself an unreasonable restriction, it is certainly difficult to sustain any claim that the amended

25. Fort St. George Gazette, Madras, dated 29th September, 1954, Part IV-B, pp. 141-148.

26. (1956) 1 M.L.J., p. 540.

Section 31 (1) which divests the *Matadhipati* of all control would amount to reasonable restriction on his Fundamental Right. No doubt clauses 4 and 5 of the amended Section give the *Matadhipati* a right of recourse to the Court but that by itself would not make an unreasonable restriction on his Fundamental Right a reasonable restriction. Thus the amended Section 31 constitutes an unreasonable restriction on the Fundamental Rights of the *Matadhipati* guaranteed by Articles 19, 25, and 26, and would therefore be void under Article 13."[27]

The Act of 1959 gave the power of utilization of surplus funds under Section 36 to the trustee after getting the sanction of the Commissioner. And the purposes on which the surplus could be spent, i.e., religious, educational and charitable were more minutely detailed in Sections 66 (1), and 86 (2), of the new Act of 1959.

Section 52 was not challenged in the Shirur Math case. According to the Act of 1951 a trustee could be removed on the six grounds specified in Section 52. The amending Act of 1954 added three more grounds to the list. These were: (f) wastage of funds or properties of the institution or the application of such funds or properties for purposes unconnected with the institution; (g) The adoption of devices to convert the income of the institution, of the funds or properties thereof into '*pathakanikas*'; (h) leading an immoral life or otherwise leading a life which is likely to bring the office of the head of the *math* into contempt."[28]

Of these, clause (f) was challenged in the Udipi Math case on the ground that it constituted unreasonable restriction. The petitioner's point was that in Udipi the *Matadhipati* had been donating large sums to the educational institutions. It was feared by petitioner that the Commissioner might take this action against the *Matadhipathi* for spending on purposes unconcerned with the *math*" and the *Matadhipati* would be removed from the office.

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27. (1956) 1 M.L.J., p. 540.

28. Ibid.

This they pleaded, constituted an unreasonable restriction of the Fundamental Right, granted by Article 19. The Court differed from the view and held that they did not apprehend any such trouble. The reason they gave was that "Section 52 (1), it should be remembered, empowered the Commissioner..............to move the Court to remove the *Matadhipati* on the grounds mentioned in Section 52 (1). It is for the Court to consider, even with reference to Section 52 (1) as it stands whether a case for the removal has been made out. Certainly the Court would not blind itself to the declaration of law by the Court and by the Supreme Court of what the *Matadhipati's* real position is and what his powers of disposal of properties and the income of the *math* are."[29] The Section 52 (1) (B) was therefore not an unreasonable and uncertain restriction on the fundamental rights of the *Matadhipati*."[30] The whole Section as it was has been included in the Act of 1959.

Section 55 was another section challenged in the above case. The Section related to the power of a trustee to spend the *Pathakanikas*. According to the original Act, of 1951, the *Pathakanikas*' were defined as "personal gifts to him as the head of the Math." and the trustee required to keep regular accounts of the receipts and disbursements of their gifts and produce them before the Commissioner. In the Shirur Math case the Supreme Court held the condition as unreasonable restriction of the fundamental right guaranteed by Article 19 (1) (f).

In 1954, the Act was amended and the following new Section was substituted:

"The trustee of a *math* shall keep regular accounts of receipts of 'Pathakanikas' that is to say, any gift of property made to him as the head of the math and shall be entitled to spend the

29. Fort St. George Gazette, Madras, dated 29th September, 1954, Part IV-B, pp. 141-168.

30. Ibid.

said '*Pathakanikas*' in accordance with the custom and usages of the institution."[31]

Thus the above Section defined '*pathakanikas*' differently. These were now the gifts of property to him as the head of the *math*, and not "personal gift.........". Secondly the *Matadhipati* was required to keep the accounts of the *pathakanikas* and not required to submit them to the Commissioner, which was omitted. Thus the Act of 1954 distinguished and divided the *pathakanikas* into two categories, (a) those given to him as personal gift and (b) those given to him as the head of the *math*. And the *Matadhipati* was required to keep the accounts of the latter category of gifts and spend the same according to the usage of the institution. The new Section was challenged in the Udipi Math case on the ground that it constituted unreasonable restriction. The Court held "with regard to keeping of accounts of such offering namely the *pathakanikas* which merge in the general income of the *math*, Section 55 casts no heavier obligation on the *Matadhipati* than the obligation that he should keep regular accounts of the income and expenditure of the *math*. That would certainly be reasonable restriction.........And as regards the second point in spending according to usage was also a reasonable restriction, though it was a superfluous clause."[32] The Section 55 was held valid. By Section 62 (2) of the Act of 1959 a new clause was added. According to this the '*pathakanikas*' became part of the funds of the *maths*. Even this condition is rather superfluous.

Rule 10 framed under Section 100 (2) (y) was also challenged in the Udipi Math case. It related to the fixing of pay and emoluments of the office bearers of the religious institution including *math*, by the Commissioner or Area Committee, and the *Matadhipati* was not empowered to alter it without the previous permission of the Commissioner. The Court held this rule as an unreasonable restriction in respect of math on the ground that,

31. Fort St. George Gazette, Madras, dated 29th September, 1954, Part IV-B, pp. 141-148.

32. (1956) 1 M.L.J., p. 542.

"it would reduce the position of the *Matadhipati* to the level of a mere servant of the State Department. The rule 10 therefore was *ultra vires* the rule making power of the Government under Section 100 (2) (y) and is unenforceable against the *math.*"[33]

Section 76 (1) which related to collection of contribution was challenged on the ground that it was a tax and not a fee. The original Section 76 (1) (of the Act of 1951) was held *ultra vires* on the ground that the levy was a tax and not a fee. It was amended by the Act XXVII of 1954. "According to this amendment 1. the contribution had to be paid to the Commissioner and not to the Government (as originally was done), 2. for defraying the expenses of the Department, 3. the Commissioner was to be a Corporation sole, 4. in whom all the collections were vested and 5. this did not merge with the Consolidated Fund. The Court held this to be *intra vires* on the ground that it satisfied the following tests: 1. It should fall within the ambit of Entry 47 read with Entry 28 in the list of the Seventh Schedule of the Constitution. 2. It should be *quid pro quo* basis to justify the levy of fee. 3. Services rendered by the Government which constitute the *quid pro quo* to the levy must be incidental to the system of regulation. 4. That regulation itself be in consideration of public interest. 5. Statutory regulation should not exceed the limit of reasonable restriction Fundamental Rights."[34] In the light of these observations it was held that the levy of contribution was fee and not tax.

However the Court held the Section 76 (5) *ultra vires.* The sub-section was added by the amending Act of 1954. It related to the power of the Commissioner to spend the surplus left out of the contribution after meeting all the services on poor, needy, renovation etc. It was held *ultra vires* because it failed to satisfy the first two conditions. It was therefore a tax and not a fee.

The Act of 1959 tried to get over the invalidity of the original clause 76 (5) by the Section 97 of the new Act. It crea-

33. (1956) 1 M.L.J., p. 543.
34. (1956) 1 M.L.J., p. 546.

ted the "Hindu Religious and Charitable Endowments Common Good Fund", and vested it in the Commissioner who is empowered to spend it on the purposes specified above.

Sections 80 and 81 were new clauses added by the Act of 1954. They related to the formation of the Commissioner as the corporation sole, under which head all the contributions were to be collected and vested. They were challenged in the Udipi Math case but were held valid in the light of observations made in the Shirur Math case by the Supreme Court.

Similarly Sections 82 and 82 (1) which were added by the Act of 1954 related to the formation of the fund and validation of levy respectively with retrospective effect. Both sections were held *intra vires*.

By the Act of 1959 the 'Endowments Administration Fund' was formed and under this head all the contributions are invested and the Commissioner is the corporation sole of the Fund.

The verdict of the Madras High Court has strengthened the decision in the Shirur Math case. The court's decision generally limited the State control of these institutions of the denominational character; at the same time it confirmed that the institutions and their heads owed a certain responsibility to the public.

Thus the Sections 21 and 21-A which introduced amendments in the original Section 21, were considered more unreasonable than the original Section. The original Section was declared invalid because it gave almost unregulated entry to a certain set of people. The amendments, instead of improving the matter, had widened the scope of unregulated entry by allowing more number of people than were allowed by the original Section. Secondly, another amendment introduced in the same section, required the Commissioner to give notice to the trustee. The real responsibility of the Commissioner to give notice was bypassed by introducing the words "if practicable." Also, it was felt that the freedom given to the denominational institutions by the Constitution and their usages, etc. would cease to be respected by the

Government if such loopholes were allowed by the statutes. The High Court of Judicature at Madras therefore justly declared these sections unlawful.

Section 30 (2) expected the *Matadhipati* to pay 'due regard' to the instruction issued by the Commissioner. The State Legislature had maintained the spirit of the original condition where the *Matadhipati* was "to be guided by" the Commissioner, by replacing it with 'have due regard' to the instructions issued. The amended Section therefore was declared *ultra vires* and the heads of the denominational institutions were no longer required now to be guided or instructed by the Commissioner when they had already obeyed the conditions put forward by the provision of the Statute. Thus the limitation of the authority of the *Matadhipati* after the fulfilment of certain obligations was declared to be beyond the scope of State control.

The amendment of the Section 31, which related to the power of the utilization of surplus funds, was even more mischievous than the original Section. Under the original Section the *Matadhipati* had at least possessed the initiative in utilizing the surplus. The amendments of 1954 robbed him of this power. Again, formerly the surplus of the income was to be utilized but the amendments included in the surplus that which was accumulated by good management. Here too, the attempt of the Legislature to expand the scope of State Control over religious institutions of denominational character was declared unlawful by the Court.

The Hindu Religious and Charitable Endowments Department had tried to acquire control over the servants of *maths* and such other religious institutions by framing the Rule 10 under Section 100 (2) (y) of the Act of 1951. The desire of the administration to seek control over the internal management of the institutions of denominational character, which is otherwise not permitted by the Constitution, is evident. Hence the rule was declared *ultra vires* and this decision placed tne management and control over the internal administration of such institutions beyond the scope of the Executive.

The declaration of Section 76 (5) as invalid has also confirmed the principle that revenues obtained by religious institutions may not be treated as part of the general revenues of the State strengthening thereby the idea that Government may not claim ownership of the property of religious institution without violating the Constitution.

However the declaration of certain other sections as valid squarely places a certain responsibility on the heads of religious institutions of denominational character, which otherwise enjoy greater freedom than other public institutions. The addition of new grounds for the removal of the *Matadhipati* under the amended Section 52 and the obligation placed on the *Matadhipati* to keep account of *pathakanikas* under amended Section 55 were held as reasonable restriction on the rights of the *Matadhipati*. Thus an attempt of the State to control some irresponsible heads of the religious institution, was upheld by the Court, thereby assuring that the heads of such institutions owed a responsibility to the members of their respective institutions.

CHAPTER XIV

THE MADRAS HINDU RELIGIOUS & CHARITABLE ENDOWMENT ACT (XXII) OF 1959

The Madras Hindu Religious and Charitable Endowments Act XXII of 1959 consolidates the law on the subject and makes it applicable to all Hindu public religious institutions, and endowments except the Incorporated and Unincorporated Devaswams in Kanyakumari District and Shenkotah Taluk.

The statement of Objects and Reasons explains the necessity for the new Act. Some of the Sections, according to it, of the Madras Act XIX of 1951 as amended by the Madras Act XXVII of 1954, require a revision in view of the later decisions of the High Court and the Supreme Court. Certain difficulties have also been experienced in the working of the Act by the Madras Religious and Charitable Endowments (Administration) Department. It has been decided that suitable provisions should be made in the Act so as to remove the above difficulties and also to remove the defects pointed out by the Courts. As the amendments for the purpose will be numerous, it is considered necessary to replace the existing Act by a more comprehensive Act."[1]

The new Bill differed from the previous one in the following respects.

1. Hitherto the provisions of the Act could be applied to charitable institutions if there was mismanagement, otherwise even if the trustee wanted the Act to be applied, it could not be done. The Bill of 1959 made provision for the voluntary application of the Act when applied by the trustees of the charitable institutions.

2. The Government was given power to exempt the institutions under the control of the official trustee, or Administrator —General.

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1. *Fort St. George Gazette* Extraordinary, Madras, dated 13th April, 1959.

3. The High Court in deciding a writ petition had laid down that the different items of endowments created under a trust deed for the performance of works of service or charity were separate trusts and therefore the demands issued on the aggregate of the income of several trusts created by a single founder were incorrect and unenforceable. "The decision caused heavy loss in contribution of the cost of audit due to the Hindu Religious and Charitable Endowments (Administration) Department. In order to overcome this, explanation (1) has been added under clause 6 (18) to treat such cases as a single endowment."[2]

4. Temples and religious institutions situated outside the State of Madras and having properties situated within the State had hitherto been outside the scope of any control by the State Government. A provision was made, in the Bill, to grant the State Government control over these properties.

5. Under the former act the Assistant Commissioner who was the Chairman of the Area Committee, had no power to vote. The new Bill not only gave him power to exercise second and casting vote in case of a tie but also granted him powers to act in time of emergency or when the Area Committee failed to discharge its duties.

6. Section 21 of the Act of 1951 had permitted an unregulated entry into the temple. The High Court held the Section invalid. The amending act added the words "if possible" to the clause but to no avail. The High Court still disallowed this provision as being unconstitutional. To remove this difficulty, the Bill made it obligatory on the part of the officers entering, to give notice of their entry into the *sanctum sanctorium* or the *Pooja Graha*.

7. According to the provisions of the principal Act, no action could be taken against the trustee, even if it was discovered during the course of inspection that the trustees had misap-

2. Madras Legislative Assembly Debates, dated 28th April, 1959, Vol. XXIII, p. 534.

propriated the funds. The Bill provided for necessary action to be taken against the persons concerned.

8. The High Court had held Section 30 (2) of the Act' which had required the trustees to give due regard to the general and special instructions of the Commissioner, to be unreasonable restrictions on the trustees. The Bill altered this, by first excluding the *maths* and temples which had hereditory trustees from the scope of the clause, and then by requiring the trustees of all the public temples to be "guided by such general and special instructions as may be given by the Commissioner."[3]

9. The principal Act, had authorised the Commissioner to administer the surplus funds. The High Court held the Section invalid in that it compelled the trustees of *maths* and temples to spend the surplus at the discretion the Commissioner. The Bill excluded the *math* altogether from its scope. And trustees of temples were allowed some initiative in the appropriation of surplus funds.

10. In view of the preferential treatment shown to the *maths* by the Courts, the specific endowments attached to *maths* were placed under the control of the Commissioners.

11. Clause 42 of the Bill laid down that no suit or appeal already in court could be withdrawn or compromised without the previous sanction of the Commissioner. In the past the trustees had frequently compromised without paying heed to the interest of the institution and the Bill aimed at preventing this.

12. Under the principal Act, the submission of proposals to fix the scales of expenditure was left to the discretion of the trustee. The Bill made it obligtory on the part of the trustee to submit the proposals either to the Area Committee or to the Commissioner.

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3. Madras Legislative Assembly Debates, dated 28th April, 1959, Vol. XXIII, p. 535. Also see, Fort St. George Gazette Extraordinary, Madras, dated 13th April, 1959.

13. Under the principal Act, the Commissioner and the Deputy Commissioner, when such power was delegated to them could frame a scheme for *maths*. In view of their special status only the Commissioner was allowed to settle the schemes for the *maths* and he was prevented from delegating this power to the Deputy Commissioner.

14. Chapter VII of in the principal Act provided for the eviction of unauthorized occupants and even those legally authorised occupation which might mar the beauty or religious atmospher of the temple premises. Clause 81 provided for the setting up of a tribunal to enquire and determine compensation payable to the lessees whose lease was sought to be determined prior to its normal term.

15. The power to scrutinise the budget and review the audit reports of the religious institutions under the jurisdiction of the Area Committee was vested in the Area Committee. As it was not possible for the Area Committee to carry out the both duties properly, the Bill vested second function in the Assistant Commissioner.

16. Clause 90 of the Bill provided for the establishment and maintenance of a Provident Fund for the Executive Officers of religious institutions.

17. Clause 95 instituted a separate Hindu Religious and Charitable Endowment Common Good Fund out of the contributions voluntarily made by the religious institutions from their surplus funds for the renovation and preservation of needy temples.

18. Clause 98 required the Executor of a will under which a bequest was made in favour of a religious institution, to forward a copy of the will to the Deputy or Assistant Commissioners of the division where the will was registered.

19. Clause 104 aimed at removing the discrimination shown at the time of distribution of *prasadam* but at the same time, it tried to protect the rights of the dignatories and the *Archakas* who were entitled to priority in the matter.

The Bill as published and explained in the Madras Legislative Assembly, was criticised by the Tamil Nadu Hindu Religious and Charitable Endowment Trustees Association on the ground that it retained many objectionable clauses which armed the official hierarchy with enormous powers and unnecessarily fettered the discriminatory powers of the trustees and restricted their independance. There objections were many. According to them clause 23 gave the officials unlimited power of entry; clause 14 restricted the jurisdiction of the Area Committee to single class of temples only; clause 16 provided for the continuance of the Assistant Commissioner as the Chairman of the Area Committee and Clause 16 (2) empowered him not only to vote but also to exercise second and casting vote, and clause 16 (3) empowered the Assistant Commissioner to report the proceedings of the Area Committee and suggest consequent action; clause 20 retained the power of revision for the Commissioner to take action *suo motu*; clause 15 (3) and 25 (1) empowering the Government to exempt persons from certain disqualifications to be members of Area Committee and trustees of religious institutions, was an unlimited power; clause 14 drastically curtailed the discretion of the trustees in the matter of expenditure for securing the welfare of the pilgrims; Clause 35 too restricted the discretionary power of the trustees in the matter of the disposal of the surplus funds of the institutions; clause 45 reduced the term of office of the trustees to 3 years clauses 68 to 74 retained the power of notifying the religious institutions other than those trustees which had hereditary trustees with a beneficial interest in the income and *maths*; clause 84 which gave the Assistant Commissioner also power to pass the budget; clause 111 empowered the Assistant Commissioner to act for Area Committees in emergencies without sufficient safeguards; clause 112 gave ultimate power to the Government to call for and pass orders on the records of the Commissioner, Deputy Commissioner, Assistant Commissioner, Area Committees and even the trustees. Besides pointing out these extraordinary powers vested in the Department and the Government, the memorandum of the Madras Hindu Religious and Charitable Endowment Trust Association urged the Joint Select Committee to study the

conformity of these clauses with the Fundamental Rights guaranteed under the Constitution.

The Joint Select Committee made a few important alterations.

1. It instituted an Advisory Committee for the State to make recommendations in respect of administrative matters and to advise the Government in respect of such matters as may be referred to it by the Government.

2. It provided that the Commissioner or at least one of the Deputy Commissioners should belong to the State Judicial Service.

3. It also provided that the Commissioner, Deputy Commissioners and servants other than Executive Officers of the religious institutions should be servants of the Government.

4. It decided that the cadre of the Executive Officers should be *provincialized* and provision was to be made for the recovery of the salaries, allowances, pensions and other remunerations paid to these officers from the fund of the religious institutions concerned.

5. It was decided that the qualifications prescribed for the trustees should be made applicable to the members of the Area Committee. Also the Chairman of the Area Committee was to be a non-official appointed by the Government and the Assistant Commissioner was to be only the Secretary, ex-officio, to the Area Committee without voting powers and not Chairman of the Area Committee as originally provided for in the Bill. The Commissioner, as it was recommended by the Joint Select Committee, should allow the Area Committee reasonable opportunity of showing cause against any action proposed to be taken by him.

6. The Bill had not provided for the appointment of the Executive Officers by the Commissioner. The Joint Select Committee empowered the Commissioner to appoint such officers for any religious institutions other than *maths,* subject to such conditions as may be prescribed. A new clause was therefore added to this effect.

7. The term of office of the trustees was extended from 3 years to 5 years.

8. The Committee decided that the those vested with the power to suspend, remove, and dismiss the trustees and hereditary trustees of listed temple, non-hereditary trustees of non-listed temples and hereditary trustees of non-listed temples should be the Commissioner, Area Committee and the Deputy Commissioner respectively and the appeals should be to the Government, the Commissioner or the Deputy Commissioner as the case might be.

9. The Committee decided that the Commissioner on his own, or on the application of five interested persons should have the power to frame a scheme for a *math* or a specific endowment attached to a *math*. He was also given power to modify the scheme framed by the Court if the Commissioner was satisfied that the scheme or the rules made thereunder were inconsistent with the Act.

10. The original Bill had provided that the budget of every institution should provide for 50% of annual surplus for repairs and renovation of the buildings. The Joint Select Committee decided that 25% would be enough. The Joint Select Committee also reduced the maximum contribution from 8% to 7%.

11. The Bill had not provided for taking immediate possession of a property when a new trustee was appointed. The Joint Select Committee decided that the Presidency Magistrate could appoint a Receiver for taking possession of the property.

There were two minutes of dissent. One pleaded for a more comprehensive Bill aimed at removing all the defects and the other pleaded for the vesting of the powers of control and supervision in an independent agency. In his minute of dissent, Mr. N. K. Palaniswamy observed that the Bill was not comprehensive enough to remedy the defects of the old enactment. He urged, "In the light of modern conditions in a Secular State......while protecting all religious rights and observances, case should be taken to see that the surplus funds other than those actually needed for the institution are not misused but utilised for urgent

and necessary public and charitable purposes at least. The provision of the Bill do not go far enough to ensure this.[4] His other proposals were that "the Area Committees should consist of people's representatives and elected by a suitable and appropriate method, and the emoluments and conditions of service of temples servants must at least be raised to that of the last grade Government servants......... The lease of the temple lands should be made directly to tenants and tenants' co-operatives without intermediaries and suitable changes should be made in the terms of the Fair Rent Act to make it applicable to all tenants of lands under religious institutions."[5]

Mr. K. Balasubramania Ayyar repeated his suggestions and expressed regret that they had not been incorporated in the revised Bill. The accepance of such measures, he felt, would Prevent a departmentalized and centralized the administration. "He stated in his minute of dissent that ... with a view to preserving the autonomy of the religious denominations, it was suggested in the evidence and also in the Select Committee that the general administration should be vested in an independent statutory body. This suggestion has not been. accepted. Only an Advisory Body has been proposed to be constituted by clause 7 of the Bill. Even in the case of the Advisory Body it could have been provided that the Government should be guided by its advice. But this has not been done."[6] His other suggestions were the revitalization of the Area Committees; the appointment of two Commissioners, one in charge of administration and the other in charge of adjudication of the right of parties in disputes. These proposals too were not accepted.

Criticism of the Bill in the Legislature was mainly against its principles.

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4. Report of the Joint Select Committee on the Madras Hindu Religious and Charitable Endowment Bill 7 of 1959, p. 69.
5. Report of the Joint Select Committee on the Madras Hindu Religious and Charitable Endowment Bill 7 of 1959, pp. 69-70.
6. Report of the Joint Select Committee on the Madras Hindu Religious and Charitable Endowments Bill 7 of 1959, p. 71.

Criticising the underlying principles of the Bill, Hon'ble Mr. M. Patanjali Sastri, member of the Madras Legislative Council and formerly the Chief Justice of India, said that rigid departmental control over the religious institutions and the management was against the secular nature of the Indian Constitution. Explaining the implications of a secular state Mr. M. Patanjali Sastri said that the State under such conditions, "is no longer to concern itself with the religious life of the various communities in the land. The prime purpose of this is no doubt to protect the religious minorities, religious communities from the exertion of political power by the majority community by virtue of its strength in numbers."[7] But the Secular State he claimed, should not only protect the rights of minority but also assure that the rights of the majority were equally respected. The majority was to be allowed of as much freedom of religion and the right to manage its own affairs as the minorities. He pointed out that these implications of secularism were acknowledged and granted by Article 26 of the Indian Constitution. Quoting the text of Article 26, and emphasising his point further, Mr. Patanjali Sastri said ... "subject to public order, morality and health, every religious denomination or any section thereof ... including the religious denomination designated as Hindus and any section thereof such as Vaishnavite, Saivate, Madhva, Thenkalai, Vadakali shall have right to :

(a) establish and maintain institutions for religious and charitable purposes.

(b) manage its own affairs in matters of religion.

(c) own and acquire movable and immovable property and

(d) administer such property in accordance with law ...

Thus the religious denominations are allowed the right to manage their own affairs on matters of religion. I need hardly say that the management of temples and management of *maths* are essentially and primarily......managements, of matters of religion...... The temples and *maths* belong to the Hindu community......and the

7. Madras Legislative Council Debates, dated 12th September, 1959, Vol. XXXIV, p. 265.

right to administer such property in accordance with law is also conferred as a fundamental freedom upon the Hindu community, i.e., the religious denominations relevant in the case."[8] In Mr. Patanjali Sastri's opinion the Indian Constitution granted freedom to all religious denominations and that the Hindu community being as much of a denomination was entitled to the same as any other. Thus emphasized that with the adoption of the Constitution circumstances in India had changed and the previous practices of interfering with the administration of the religious endowments should no longer be invoked to support the Bill.

Mr. Patanjali Sastri, however, maintained that the such freedom should have limitations. He said, "the freedom of management of their own properties is coupled with the restriction that such management must be in accordance with law and it is here that the right of the State to interference comes in ...."[9] However, these restrictions, according to Mr. Patanjali Sastri had already been established by the numerous judicial decisions. The 'general law', Mr. Patanjali Sastri believes, besides placing such restrictions, also places threefold obligations on the trustees and the managers of the religious endowments and trusts. These, according to him are, "the trustee is to manage the properties without being guilty of maladministration, misfeasance or a breach of trust, maintaining an inventory of such properties. Secondly the general law imposes upon the trustees and managers the obligation to maintain correct accounts and to produce them for scrutiny before the appropriate authorities. Thirdly, they must also look to the proper upkeep of the institutions and endowments. There are obligations placed by the general law on trustees and they are implied in the significant terms used here 'in accordance with law".[10] The State's role according to him was simply to see that the administration was in accordance with the general law referred above· "The aim of every legislative mea-

8. Madras Legislative Council Debates, dated 12th September, 1959, Vol. XXXIV, pp. 265–266.

9. Ibid. p. 266.

10. Ibid. p. 267.

sure seeking to control the management of religious institutions and endowments should go no further than the enforcement of the obligations imposed by the general law on the trust, coupled no doubt, with appropriate remedial provisions for due enforcement of these obligations. If any measure strayed beyond these well recognised limitation, to that extent it would be against the spirit, if not, the letter of the Constitution of India."[11] said Mr. Patanjali Sastri. Thus the State according to him had a very limited role, that of enforcing the obligations of the trustees and watching over the performance of these obligation with the aid of the remedial provisions. Mr. Patanjali Sastri's second criticism was a parlimentary Government based on adult franchise could not be expected to guarantee non-interference in the administration of religious affairs. He feared that, "the fortunes of political parties may vary and there may be changes and there is no guarantee that persons in charge of religious endowment would be imbued with the same spirit of religious faith and respect of religion as ...... the Hon'ble Mover therefore, there is a danger that the tighter the control which the legislative measure imposes upon the manager of the religious institutions, the wider the door which such a measure would open for the intrusion of party politics......a great danger to our religious institutions, and the Government......must realise this potentiality for mischief by taking a long view of what may happen in future."[12] Thus it was believed that supervision and the control of administration of the religious institutions and the policy of a Government dominated by a particular political philosophy, was bound to affect the existence of the religious institutions; and the precedent which the present Government would establish would encourage "the political parties in power that brazenly profess lack of faith in temple worship, and could lead to the violation of the basic religious rights of the community."[13] It was to guard against such tendencies that Mr. Sastri and other members of the Madras Legislative Council urged lesser control

11. Madras Legislative Council Debates, dated 12th September, 1959, Vol. XXXIV, p. 267.

12. Ibid.

13. The Hindu, dated 9—5—1959.

and no interference in the administration of religious institutions by the Government.

With regard to the application of *Cy pres* doctrine the members of the Opposition in Madras Legislative Council held that the Will of donors and the founders in the matter (of diversion of surplus) should be respected. Mr. Sastri added......to say that any surplus left over should be diverted to purposes altogether outside their intention......would be a misapplication of the doctrine. If any surplus is left over, the natural thing would be to increase the scale of expenditure on the Original object on which the income derived from the endowment should be expended......and the State cannot go about arguing, bringing in a new fangled notions and trying to cut down the scale of expenditure and thereby create surplus.'.[14] He held that the many provisions aiming at the diversion of surplus funds offended the doctrine of *Cy pres* when applied to trust funds and charitable endowments.

The Hon'ble Dr. A. Lakshmanaswami Mudaliar, Leader of the Opposition in the Madras Legislative Council, stated that the Madras Religious Endowments Bills had always been hasty pieces of legislation and that during the time he was the member of the House, such Bills were frequently introduced either to frame a new Act or to amend an existing one. "These hardy perennials for the activities of the Legislature," Hon'ble Dr. Mudaliar believed, ...was the result of an ill drafted piece of legislation."[15]

His second vehement criticism of the Bill was directed at the attempt on the part of the Government to 'near nationalize,' the temples. Quoting the text of the clause 45, Dr. Lakshmanaswami Mudaliar said that the Government was being invested with vast powers. They could under its clauses exempt any religious institution from the operation of the Act or cancel such exemption. The Commissioner, who had been vested with equally enormous

14. Madras Legislative Council Debates, dated 12th September, 1959, Vol. XXXIV, p. 269.
15. Madras Legislative Council Debates, dated 4th May, 1959, Vol; XXXIII, p. 89.

powers, Dr. Lakshmanaswami Mudaliar said, had become 'a super *Matadhipati*,' "He could," "send even a clerk and call for their accounts, and he can by one stroke of the pen cancel the recommendations of the Area Committee. Why are such enormous powers given to the officers of the Department? Even the Minister in charge of the Hindu Religious Endowments will not be able to check or exercise any control."[16] Commenting on the obvious inconsistencies of the Government he pointed out that while all members of the Area Committee were being nominated by the Government the same Government was trying to introduce fully elected panchayats in the villages. He asked the mover of the Bill whether he was "sure that those who are dispassionately striving to improve the temples, who have nothing to gain by the membership of the Area Committee, who have no patronage to exercise.........will allow themselves to be nominated?"[17] He observed that many such members would not become members of the Area Committee because of the enormous powers vested in the Assistant Commissioner. He further emphasized that the role of the Government was to safeguard the rights granted to the people and if it stepped beyond this field of activity, its acts were not laws.

Those who supported the Bill in the lower and upper chambers of the Madras Legislature, congratulated the mover of the Bill, for providing for the removal of encroachments which would help the Madras Religious Endowment and Charitable Department to keep the precincts clean and safe. They welcomed the mover for provincialising the services of the Executive Officers and urged that the temple servants should also be treated as Government servants. Some of them even pleaded for to be appointed as trustees, Executive Officers and temple servants, and to be nominated as member to the Area Committee.

Regarding *maths*, some of the supporters urged the Government either to have a separate Bill for *maths* or to invest the

16. Madras Legislative Council Debates, dated 4th May, 1959, Vol. XXXIII, p. 89.

17. Ibid. p. 42.

Government with limited powers of control over these *maths*. They also urged that the Area Committees should be vested with more powers.

Replying to the criticism the mover of the Bill the Hon'ble Mr. M. Bhaktavatsalam argued that the Bill did not conflict with Article 26 of the Constitution, which, according to him, referred to religious denominations and not to the Hindus who were not a religious denomination but a religious sect. He pointed out that the judicial decisions had placed temples of religious denominational character outside the scope of the Act but not the temples in which all the Hindus, irrespective of the denomination were interested.

The supporters of the Bill recommanded that surplus funds be diverted and utilized "for financing the nation building activities", such as the building of hospitals, schools providing mid-day meals to children.

In order to justify the diversion of the surplus funds of religious trusts, Hon'ble Mr. Bhaktavatsalam said, 'If there is a balance left after fulfilling the objectives of the trust, how else could you spend it? Is not feeding the poor in absolute conformity with a religious objective? After all what is a religious feeling? Take medical relief to the needy. Is it not religious? Our great Alwars and Nayanmars led the way. It was said of Sundarar one of the four Tamil Saints, that once he saw an area affected by famine...... He prayed at once to God for food to feed them...... He suddenly found some heaps of paddy and utilised it. God came to his relief and he then gave relief to the starving millions...... If the people are really religious and pious, I am unable to understand how they think that this would not be the object of the donor and that the funds should be utilised."[18] Thus according to Mr. M Bhaktavatsalam, the charitable purposes were also religious acts and could not be opposed.

18. Madras Legislative Council Debates, dated 17th September, 1959, Vol, XXXIV, p. 532.

As Mr. Bhaktavatsalam justified Government control over *maths* on the ground that while there were some *maths* which were well managed, they was not so in every case. It was to improve the management of the *maths* that the Government felt compelled to step in, "Is it not the bounden duty and responsibility of the Government to rectify defects and set matters right so that the objectives of the *maths* could be properly carried out and, at any rate, to see that there was no mismanagement?"[19] Defending the nomination of the members to the Area Committees, he assured the critics that the Government was not influenced by the party affiliations of the persons concerned, but it always did take into account whether they were genuinely interested in the temples and whether they would be effective members of the Area Committees or the Board of Trustees.

Finally, the Bill as altered by the Joint Select Committee was passed into an Act and placed on the Statute book as the Madras Act XXII of 1959.

The aim of the Madras Act of 1959 was to consolidate the law relating to religious endowments in Madras, as such to a great extent it is a reproduction of the Madras Act of 1951 and Acts of 1954 and 1956 and the incorporation of the judicial interpretations of the controversial clauses of these acts. It does however, introduce some new provisions. The following are some of the salient features of the new Act,

1. The appointment of a member of the Madras Higher Judicial Service, at least to one of the posts of the Deputy Commissioners, was made compulsory under Section 9 (2).

2. The posts of Executive Officers of religious institutions were provincialised.

3. The Executive Officer was to be appointed by the Commissioner to any religious institution other than a *math* or specific endowment attached to a *math*.

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19. Ibid. p. 533.

4. The Government appointed the Chairman and 4 members to an Area Committee. The Assistant Commissoner was to be the Secretary of the Area Committee without the power to vote.

5. An Advisory Committee consisting of 12 non-official members besides the Minister in charge of the portfolio, the Secretary in the Administrative Department of the Government and the Commissioner of the Hindu Religious and Charitable Endowments Department, was constituted under Section 7 to advise the Government in the administration of the religious and charitable institutions.

6. Provision was made for the removal of encroachments from temple precincts and the constitution of a special tribunal for the assessment of compensation.

7. Provision was made under Section 97, for the establishment of fund called the Madras Hindu Religious and Charitable Endowments Common Good Fund out of the contributions voluntarily made by the religious institutions form their surplus funds or by other persons for the renovation and preservation of needy temples and institutions.

8. Hereditary trustees were given greater points consistent with the provisions of the Indian Constitution and the decision of the Madras High Court.

9. Provision was made under Section 33 (3) for surcharging the trustees, found to have misappropriated the funds of the institutions or expended them improperly and illegally, even during inspection of the institutions by the officers, without waiting for completion of audit.

10. Special provision was made for the settlement of schemes for *maths* by the Commissioner.

11. All Hindu religious institutions other than Incorporated and Unincorporated devaswams in the Kanyakumari district and Shenkottah taluk of Tirunelveli District was brought under the purview of this Act. The Kanyakumari district and Shenkottah

Taluk were areas transferred to Madras State from the old Travancore State. And in these areas the Travancore Devaswam Act had operated. The Madras Act of 1959 was modified to permit the operation of the Travancore Devaswam Act. This had divided the devaswams into two categories Incorporated and the Unincorporated. According to the provisions of the Travancore Devaswam Act, the Incorporated Devaswams were managed directly by the Government which had established the Devaswam Board for this purpose. The Unincorporated Devaswams were managed by trustees and the Devaswam Board merely supervised their management. The same pattern existed in Kanyakumari District and Shenkottah Taluk.

The Act as placed on the Statute book, has a few lacunae in the text, which will in future present some difficulties. The existence of these lacunae to a certain extent justify the fears of Dr. Lakshmanaswami Mudaliar that Hindu Religious Endowment Acts were always a hasty pieces of legislation.

According to Section 12 (2) (b) the Commissioner has to recover from the religious institution concerned the salaries, allowances, pensions and other remunerations paid to the Executive Officer of the religious institution. What happens if the trustees refuse to pay the salaries and other remunerations to the Executive Officers? How are these to be recovered?

Section 53 authorises various authorities to appoint trustees of different classes of institution. There are listed temples and non-listed temples. The former are under the jurisdiction of the Commissioner or the Deputy Commissioner and the latter are under the jurisdiction of the Area Committees. The Commissioner can remove the trustee of listed temple (Section 53 (a)); the Area Committee removes the non-hereditary trustees of non-listed temples (Section 53 (b)); the Deputy Commissioner can remove the hereditary trustees of non-listed temples (Section 53(c)). However, there emerges a new class of temples after the application of Chapter VI i. e. the notified non-listed temples. After the temples are notified, the Area Committees cease to have any

jurisdiction over them. The question is who should remove the trustees of notified non-listed temples. The Act is silent on this point.

Under Section 65 (4) (a) the Deputy Commissioner has power to modify schemes framed under the Act of 1927 by the HRE Board. He is also empowered to modify the schemes settled by the Court under Section 92 of Civil Procedure Code; however, the Deputy Commissioner has not been given any power to modify a scheme settled under the Act of 1951. Was it a deliberate omission so as to give time to allow the newly framed schemes to operate or to limit litigation? The Act, however, is silent on this point too.

Judicial decisions greatly influenced the framing of the Act. As a rule the Courts disallowed frequent interference in the daily routine and old customs and usages of the religious institutions, and thus limited to a certain extent the powers of the Department. But, on the other hand, they extended the powers of the HRCE department over the *maths* and religious institutions with hereditary trustees having beneficial interest in the income of the trust.

The judicial decisions to restrict the interference of the Department in matters of daily routine and customs of the institutions are reflected in a few clauses of the Act. Section 21 of the old Act (XIV of 1951) had permitted any officer or servant of a religious institution to enter any other religious institutions. The High Court in the Udipi Math case held it *ultra vires* on the ground that it would allow even a Non-Hindu to enter even the *sanctum sanctorum*. The new Act made suitable alteration in Section 24 and permitted "any officer authorised by the Commissioner or the Area Committee to enter the religious institution." Again, the old Act had permitted the Commissioner to give notice 'if practicable' to the temple authorities before entering the religious institutions. The High Court in the same case held it impermissible and it was struck off and replaced by a clause which require 'reasonable notice' to be given before entering the institution.

In the case of *maths* and the religious institutions with hereditary trustees having beneficial interest in the income of trust properties, the Court decisions helped its clarify the question of control and supervision by the Department. The decisions are reflected in clause 76 of the Chapter VI, according to which *math* and the religious institutions of the type referred to above were not subject to the powers of notification of the Government. The Courts thus appear to be discriminating between religious institutions. They permit more freedom to *math* and religious institution with hereditary trustees having beneficial interest in the income from the trust properties than to 'public' temples, thus acquiesing in the theory that control and management of 'public' religious endowment is the function of the State. However, it is not clear what is meant by the word 'public.' Are all the institutions of Hindu community to be considered 'public' institutions? Can the religious institution of one community alone be considered 'public' institution, to be controlled by Government department consisting of members of other faiths and communities as well?

A distinct feature of the present Act is that it consolidates legislation in the field. It has consolidated not only the law relating to Hindu religious endowments but also the powers gradually acquired by the HRE Department. As a result the two bodies viz. Area Committees and trustees have become some what restricted and weak in their authority. The Area Committees, by the present Act, have lost the powers of scrutinising the budgets and reviewing the audit reports, these being vested in the Assistant Commissioner. The loss of this power will make the supervisory powers of the Area Committees ineffective and substitute a bureaucratic control for a democratic one. By vesting vast administrative powers in the Commissioner, the Act has considerably limited the power of trustees and with it local initiative. The following sections will describe the administrative powers of the HRCE Department. Under Section 21, the Commissioner is allowed to sit in revision over the proceedings or orders of the trustees of the religious institutions other than the *maths*. Under Section 34, the Commissioner has to sanction the lease of

property exceeding 5 years. The trustees are entrusted to be guided by the general directions of the Commissioner in the matter of incurring expenses for securing welfare of the pilgrims under Section 35; Section 36 provides that the surplus can be diverted only with the sanction of the Commissioner (Section 36); jewels and other valuables entrusted to the trustees, are subject to certain conditions and safeguards as the Commissioner may prescribe. Section 45 grants the Commissioner power to withdraw or compromise a suit. The trustees could fix the fees for *archanas* only under the directions of the Commissioner as specified under Section 57. Likewise, Section 58 required the *dittam* fixed by the trustee to be approved by the Commissioner or the Area Committee. Besides this, Section 61 required the *Matathipati* to submit the proposals for fixing the *dittam* to the Commissioner, and if the latter and an interested person felt that the *dittams* were not justified by the financial position of the institution or at variance with the established usage of the institution, the Commissioner had the power to submit the proposals to the State Government for revision. The Government can pass orders and these are final. Powers extended even over the institutions of denominational character. Sections 63–65 granted the Commissioner or the Deputy Commissioner the powers to frame schemes for the administration and define the duties of the trustees and the Executive Officers of religious institutions.

Besides this, the State Government also enjoyed certain administrative powers. They could appoint Commissioners, Deputy Commissioners, Assistant Commissioners, and nominate members to the Area Committee (Sections 9, 15), and make rules regarding the meeting of the Area Committees (Section 18). They were permitted to call for the records of the Commissioners, Deputy Commissioners, Area Committees and Trustees, and could examine them and pass orders (Section 114). Finally Section 116 granted the State Government wide powers to carry out the purposes of the Act (Section 116).

The possession of such vast powers by the Department of the Government and by the State Government raises a pertinent

question. Should a Government wedded to secularism administer religious institutions? Though it is often contended that the various Acts have aimed only at the secular administration of religious trusts, it is difficult to distinguish between the administration of religion properties and religious affairs.

Another doubt that arises is whether a Government based on the parliamentary system and on the universal adult franchise will be able to guarantee non-interference in religious affairs A Minister who is a political figure and a member of the Cabinet and Legislature is at the helm of the administrative mechinary and under him are the Commissioner, the Deputy Commissioner, Assistant Commissioner and Executive Officers. All these officials are Government servants. Though they are paid out of the funds of the religious institutions, they do have to work under the general direction of the Minister, who has to implement the general policies framed by the Cabinet and the Legislature. Such a structure offers ample scope for exessive control of and interference in religious matters.

Besides the trends of discussions in the Madras Legislature justify to a certain extent the fear of interference in religious matters. Some of the suggestions given to the Minister for HRCE in the State Legislature for responsive and efficient management, were that the *archanas* should be performed in the local language (viz. Tamil); diversion of funds of religious institutions to secular purposes, the proper distribution of *prasadams* etc. the appointment of Harijans as Area Committee members, trustees, temple servants, Executive Officers etc. The contents of these matters are religious and non-interference in these matters cannot be guaranteed too long. During the discussion on the HRCE Bill in the Madras Legislature, it was hotly debated whether Hindus were a 'denomination' or not. The mover of the Bill, Mr. M. Bhaktavatsalam, Minister for HRCE contended that Hindus were not a religious denomination. On the other hand Mr. M. Patanjali Sastri, former Chief Justice of India, held that Hindus were a denomination and therefore, entitled to the freedom guaranteed by Article

26 of the Indian Constitution. The Oxford Dictionary explains *the meaning of the word denomination* as follows: "A class, sort or kind (or things or persons) distinguished or distinguishable by a *specific name......A collection of individuals classed together* under the same name; now always specially a religious act or a body having a common faith and organisation, and designated by a distinctive name."[20] The word denomination therefore denotes a sect or group or a class of people having a common faith and an organisation. When one speaks of the 'Indian people' as a whole, the term 'Hindus' denote a class of that people, similarly when one speaks of 'Hindus' 'Saivites', and 'Vaishnavites' etc. denote a class of people among Hindus. Denomination is thus a relative term which signifies a religious group. Any reference to Hindus whole should be in reference to the Indian people as a whole and cannot be in absolute term *as the* HRCE Act *aims* at. Secondly, the Hindus have a 'common faith' and their 'organisation' has a few fundamental '*rules*' and '*regulations*' which have taken shape of the common practices among the Hindus all over India. According to the specifications, Hindus are a distinct group among the Indian people and therefore, a denomination. Their religious institutions are of 'denominational character' and cannot be considered as 'public' institutions which by its implication should belong to all, irrespective of the caste, creed and religion.

Section 66 of the HRCE Act, as stated earlier, permits diversion of the surplus funds of the religious trusts and institutions. The various objects mentioned in the sub-sections of Section 66 are of a religious nature. After fulfilling those objectives, if there is still a surplus, expenditure on the following few objects are permitted. The objects are "(h) promotion of fine arts, architecture; (i) establishment and maintenance of orphanage for Hindu children; (j) the establishment and maintenance of asylums for person suffering from leprosy; (k) the establishment and maintenance of homes for destitutes and physically disabled persons; (l) the establishment and maintenance of hospitals and

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20. Murray, J. '*The Oxford Dictionary*' Vol. III, Part I-D, p. 1931,

dispensaries for the benefit of pilgrims."[21] All these objects are certainly worthy objects, but are essentially charitable in nature therefore, extra-religious in nature. Besides these objects, there was also an appeal from some of the members of the Madras Legislative Assembly that the surplus funds be expended on 'nation-building activities', on the supply of mid-day meals to children; hospitals, schools etc. On this the *Hindu*, said the objects are 'all worthy objects to be sustained by charity or State initiative but certainly not related to the promotion of religious worship....[22]

The objects are certainly deserving causes, but the diversion here of the surplus funds of religious institutions would not only be wrong application of the *Cypres* doctrine but also strictly speaking illegal. It is a wrong application because the surplus of religious institutions are diverted not for the promotion of religious or any other 'religious' acts but to charitable and therefore secular objects. It is illegal because the objects are not "as closely allied to the objects of original trusts as possible." Yet the general attitudes and feelings which regard 'charitable' to be as good as 'religions' have been given legal clothing by the HRCE Act. Our understanding of the western concept of *Cypres* doctrine has therefore been coloured by our attitudes, feeling and principles.

The HRCE Act has been sometimes projecting the issue whether the existence of the Act on the statute book is compatible with the secular nature of the State.

The principles and implications of a Secular State require that the State should not actively or passively associate itself with the religious life of the people. Though it is commonly understood to guarantee religious freedom to minorities, "It is a mistake" Mr. Pathanjali Sastri said "to think that minorities are the only beneficiaries."[23] Thus according to him both the majority and the minority communities are entitled to the enjoyment of this freedom from State control of the religious affairs and the

21. The Madras Act XXII of 1959, vide Fort St. George Gazette, Madras, dated 2—12—1959, Part IV.

22. The Hindu, Madras, dated May 9, 1959.

properties of these trusts and these are the full implications of a Secular State which is the goal that the Indian Constitution has accepted.

Inspite of these objections the present Act has been passed and there was a sizable majority in the Madras Legislature supporting and agreeing with the principles of the HRCE Bill. This is another example of our understanding of the western concept of a Secular State. There is among us, largest measure of conceivable unanimity about the appropriateness of Government, even in a Secular State, doing all it can, to see that *Hindu* institutions are well managed and are maintained in a flourishing condition. That, we have a Sacular State, an elective Government which consists of people belonging to all religions, are factors which are not properly understood. On the part of political leaders and administration there is a genuine desire to shoulder the work. The Government, just because they consist of majority of Hindus, unconsciously assume responsibilities for the proper administration of Hindu religious trusts affairs, as of right. The constitutional and legal difficulties stemming from the political philosophy of religious neutrality (a characteristic of a Secular State) and Common Low principles appeal to the public and Goverment, even to some Judges, as tiresome irrelevances to be put aside as long as possible and to be minimised when they actually come up for judicial decisions. This attitude to law and its requirements is very general in the country and is a consequence of local traditions which welcomes assumption of every responsibility by Government whenever it is possible. In this context it is difficult for a student to judge with any finality whether the oft-expressed wishes of the people and their Government should prevail or that the law and the administration should be held down to the judicial norms of English practice.

23. Interview with Mr. M. Patanjali Sastri on August 26, 1959 at Madras.

CHAPTER XV

THE HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT

The Act XIX of 1951 was important in the history of the administration of Hindu religious and charitable endowments because it substituted a department for the board-type of management. This Act was replaced by another in 1959, which made a few alterations and consolidated the law on the subject.

That there is a need for the supervision of the religious endowments becomes evident when we realise that Madras has a great number of temples, *maths* and specific endowments, owning large movable and immovable properties. These institutions have to be preserved and protected not only because of their antiquity but also because they care for the spiritual well-being of the vast number of Hindus. According to the Administration Report of HRCE department for the year 1957-58 there were then—

Major institutions

Maths	126
Temples	6,727
Specific Endowments	860
	7,713

Minor Institutions—(with an income of less than Rs. 200 per annum)—4,858.[1]

According to various reports, the Hindu religious institutions possess property in the shape of jewels, .gems *vahanams* etc., to the extent of over Rs. 5,98,79,827.[2] Several religious institutions

1. G. O. 648, Revenue, dated 28—7—1959.
2. G. O. 1176, R. W. dated 7—11—1951.
   G. O. 724, R. W. dated 30—6—1953.
   G. O. 2277, Revenue dated 13—8—1964.
   G. O. 2228. " " 19—7—1955.

[4]Statement showing the number of religious institutions owning more than 200 standard acres of land and the extent of land owned by them in standard acres as defind in the Madras Agricultural income Tax Act—1955:

District	No. of institutions	Total extent of land owned by religious institutions in standard acres as defined in the Madras Agricultural Income Tax Act 1955
1. Thanjavur	64	52,080 - 25 ½
2. Tiruchirapalli	2	723 - 92
3. Madurai	2	1,055 - 68
4. Ramanathapuram	4	3,044 - 14
5. Madras	1	1,179 - 61
6. Chingleput	1	398 - 00
7. Tirunelveli	11	8,758 - 31 ½
8. South Arcot	1	370 - 90
Total	86	67,610 - 82

The extensive property of these religious institutions therefore justifies supervision and control and it is for this purpose that several Acts have been passed in the State of Madras from time to time. To-day the religious endowments and the institutions are supervised and controlled by the Act XXII of 1959, and its subsequent amending Acts.

The main purposes of the Act of 1951 and the Act of 1959 are:

1. to provide for better management and administration of HRCE.

2. to secure efficiency and speedy despatch of the work in the matter of administration and managemeut of the HRCE.

4. Information given by the Secretary to the Government, Revenue Department, on 3—9—1960.

3. to preserve the properties and the income of the institutions and endowments.

4. to ensure that the incomes are utilised for the purposes for which they were intended.

In the United Kingdom too, many Acts have been passed for providing better protection and administration of the charitable endowments and trusts. The earliest was the Charitable Trusts Act of 1853. Today there is a consolidated measure in the Charitable Trusts Act of 1960. The Charity Commission, which was established by the Act of 1853, is responsible for realizing the objectives of the first and the subsequent Acts in the field. The main purposes and functions of the Charity Commission are:

1. To inquire into the administration of charities;

2. To assist the Trustees in developing the property and in executing the trusts of charities by supplementing their powers when found defective;

3. To control the action of the trustees of charities in dealing with the corpus of the endowments;

4. To control the taking of the legal proceedings on behalf of charities;

5. To secure the rendering of accounts."[5]

By the Charitable Trusts Act of 1860, the Charity Commissioners got the power of framing schemes for the improved administration of the charities, of appointing and removing trustees and officers of charities, securing the due custody and investment of the property of charities. To secure these objectives, the Charity Commissioners are empowered to control dealings with capital endowments, to require the renderings by the trustees of annual accounts, to exercise wide powers of inquiry and provide means of vesting property and remodelling trusts without resort to expensive legal proceedings. The Charity Commissioners are not therefore

5. 'Charity Commission'—a note from the Secretary to the Charity Commission, London, S. W. 1, dated 14—6—1960. Also refer Charitable Trusts Acts of 1853 and 1860.

empowered to administer or manage the charitable trusts. They are there to see that the charities are administered according to the deeds of the trusts.

The agency for the administration of HRE, which has been created by the Act of 1951, and consolidated by the Madras Act of 1959 in the State of Madras, has certain unique features. The HRCE Department which promotes these objectives has certain unique features too. The administrative and quasi-judicial powers are vested not in a plural-headed Board but a singular headed 'tribunal' described as a 'department' in the provisions of the Act.

2. A partially democratic institution has been revived to administer a particular group of religious institutions and endowments. This is the Area Committee, consisting of nominated non-officials.

3. The Act of 1959 is responsible for decentralizing the administrative machinery of the HRCE Department, by creating different levels of management and empowering the Commissioner to delegate his powers to the Deputy Commissioner, the Assistant Commissioners and the Area Committees. Unlike the HRE Board, the HRCE Department is decentralised. To this day the Charity Commission in the United Kingdom, which was established in 1853, has undergone very few alterations. There the charitable trusts are under a Commission, with the Minister of State as a liaison officer between the Commission, and the Parliament.

The Act of 1959 provided for:

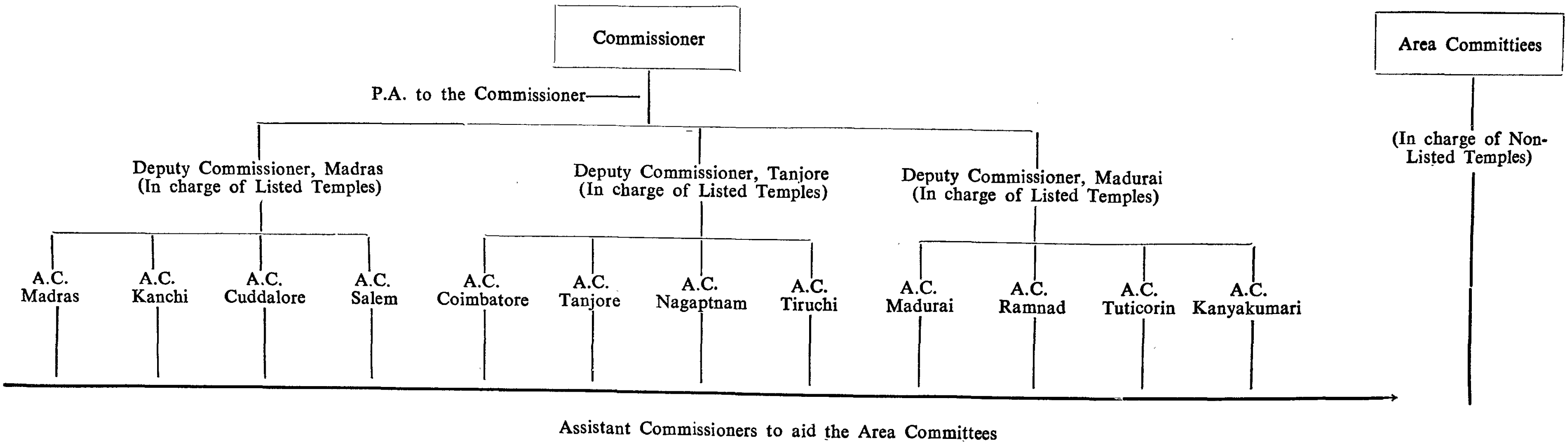
1. The Commissioner.
2. The Deputy Commissioners.
3. The Assistant Commissioners.
4. Area Committees.

The State Government plays an important role in the scheme of management. A Minister, who is a member of the Cabinet, is in charge of the HRCE Department. He is not a mere liaison officer. The Government, through him, exercise certain powers of control granted by the Act of 1959.

The HRCE Department consists of the following personnel:—

1. Commissioner—1.
2. Deputy Commissioners—3.
3. Assistant Commissioners—12.

DEPARTMENTAL CHART



A. C. — Assistant Commissioner

Theses powers are: 1. To appoint the Commissioner, Deputy Commissioners, Assistant Commissioners, and nominate members to the Area Committees etc., 2. To call for and examine the records of the Commissioner, Deputy Commissioners and Assistant Commissioners and the Area committees or trustees in respect of any proceedings, apart from those in respect of which an appeal to court is provided by the Act, to satisfy themselves as to the regularity of such proceeding or the legality of any decision or order passed therein and if necessary even to modify, annul, reserve or remit for reconsideration such orders. 3. To make rules to carry out any of the purposes of the Act.

In the administration of the religious endowments in Madras State, the State Government is aided by an Advisory Committee. This is a new institntion, not found in the Act of 1951, but provided for by the Act of 1959. The Committee consists of:

1. The Minister in-charge of the administration of the Act, who is the ex-officio Chairman of the Committee.

2. The Secretary to the Government in the Department in-charge of the Hindu religious institutions and endowments—ex-officio.

3. The Commissioner—ex-officio.

4. Twelve non-officials professing the Hindu religion, appointed by the Government. The Secretary to the Government referred to above, or any officer as the Government nominates, acts as the Secretary to the Committee. The term of office of the members of the Committee is three years. The functions of the Committee are:

1. To make recommendations to the Government in respect of such matters as may be prescribed.

2. To advise the Government in respect of such matters as may be referred by the Government to the Committee. If there is any difference of opinion among the members, it is decided by the majority of those present and voting, and in case of a tie, the Chairman has a casting vote.

At the apex of the departmental machinery is the Commissioner who is appointed by the State Government. Appoinment to the post of the Commissioner is from the members of the Madras State Higher Judicial Service or any other service or by direct recruitment. The Commissioner has to be a Hindu. He is a Government servant and is a *corporation sole*. He has perpetual succession, a common seal and can be sued in his corporate name.

The salaries, allowances and pensions of the Commissioner and all the other members of the Department are paid in the first instance out of a Consolidated Fund of the State. It is recovered from the Madras Hindu Religious and Chrritable Endowments Fund and repaid to the Government.

Vast powers of administrative and judicial nature are vested in the Commissioner and Deputy Commissioners.

The Commissioner is vested with the general powers of superintendence and control over Hindu religious and charitable endowments and institutions situated in the State of Madras and administration of religious endowments. The specific powers of an administrative and supervisory nature are the following:

1. To pass orders to ensure the proper administration of the endowments and see that the income is appropriated to the purpose for which the endowments was founded.

2. To enter the religious institutions.

3. To call for and examine the records of Duputy Commissioners and Assistant Commissioners, Area Committees, trustees—other than the trustee of a *math* or a specific endowment attached to a *math* and pass orders thereon.

4. To modify, annul, reserve or remit for recommendation the orders passed by the Deputy Commissioner, Assistant Commsisioner, Trustees—other than the trustee of a *math* or a specific endowment attached to a *math*.

5. To take to himself the exercise of the powers of Deputy Commissioner or Assistant Commissioner, if he is satisfied that either of these authorities has failed to exercise his powers.

6. With the previous approval of the Government, to specify jurisdiction of the Deputy Commissioner, Assistant Commissioner

7. To transfer proceedings pending before the Deputy Commissioner or Assistant Commissioner, to his own file and dispose it himself or transfer it to another Deputy Commissioner or Assistant Commissioner.

8. If the Commissioner is satisfied that an Area Committee has failed to exercise its powers in any respect, the Commissione- can himself exercise such power or authorise the Assistant Commisr sioner to do so. However the Commissioner has to fix the period during which he wishes to exercise such powers and give the Area Committee enough time to show cause why the above action should not be taken.

9. To sanction a compromise of legal proceedings.

10. To appoint Executive Officers for religious institutions other than *math* or specific endowments attached to a *math.*

11. To publish a list of certain institutions whose annual income as calculated for the purpose of levy or contribution by HRCE Department under Section 92 is not less than Rs. 20,000/-

12. To institute proceedings in the Court for the removal of the trustee of a *math* or specific endowments attached to a *math.*

13. To notify religious institutions other than a *math* or any other religious institution having a hereditary trustee who has a beneficial interest in the income of the institution.

14. To delegate powers and duties imposed on himself to the Deputy Commissioner or Assistant Commissioner according to the provision of the Act.

15. To constitute a Board of Trustees for institutions with an income of Rs. 20,000/- and also for institutions over which the Area Committee has no jurisdiction.

Financial powers of the Commissioner:

The Commissioner's financial powers which relate to *maths* and specific endowments attached to *maths,* are exercised by himself

and not delegated to the Deputy Commissioner or Assistant Commissioner. The Commissioner receives the budgets from a *math* and speeific endowments attached to a *math.* After giving notice to the trustees of these institutions (mentioned above), the Commissioner has power to make alterations, omissions, and additions to their budgets. He also receives the audit reports for these institutions, and reports on them to the trustees who have to rectify any short comings therein. The Commissioner has to assess and receive the contributions, and dicide on the costs, charges and expenses which the religious institutions have to pay to the HRCE Department. The HRCE Fund is invested in the Commissioner, and he is its corporation sole. He has power to create HRCE Common Good Fund, which contributes voluntarily to needy religious institutions.

Below the Commissioner are the Deputy Commissioners, in-charge of each of the divisions into which the State of Madras is divided. The position which the Duputy Commissioner occupies is that of a Government servant. He has certain original powers and others delegated by the Commissioner, under the provisions of the Act.

The Deputy Commissioner is in-charge of the administration of listed temples, i.e., temples whose income is Rs. 20,000/- and above (Section 46), He is in-charge of any judicial inquiry contemplated under the Act in respect of institutions in his division. He has to carry out the powers delegated to him by the Commissioner.[6]

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6. These delegated powers are as follows:

Sections	*Powers and duties*
Second proviso to Section 15 (2)	Power over specific endowments, listed or non-listed attached to one or more temples.
Section 24 (1)	Power to enter religious institutions.
Section 29	Preparation of register for all endowments.
Section 30	Annual verification of the register.
Section 31	Verification of register once in every ten years.
Section 32 (1)	Cousing the trustees to furnish accounts, returns, etc.
Section 33 (1)	Inspection of property and documents.

The Deputy Commissioner decides under Section 63 certain disputes and queries such as:

(a) whether the institution was is religious;

(b) whether the trustee is hereditary,

(c) whether the property is a religious endowment.

He has powers to frame schemes for proper administration of an institution, i.e., temples. The Deputy Commissioner can after being satisfied that the purposes of the religious institution had either from the beginning or subsequently become impossible of realisation, by an order direct that the endowments of the institution be appropriated to all or any of the purposes specified in the Act under Section 66 of the Act of 1959, and any aggrieved person can appeal to the Commissioner against the order of the Deputy Commissioner.

Section 35 (2)	Special instructions to Trustees to incur expenditure for securing the health of the pilgrims, etc.
Section 41 (2)	Resumption and regrant of inams.
Section 42	To see that office holders and servants should not be in possession of jewels etc., except under special conditions.
Section 53 (1) (a)	Power to suspend, remove or dismiss trustees.
Section 57	Power to fix fees for services, etc.
Section 58 (1) (2) and (3)	Fixing standard scale of expenditure, etc.
Section 77 (3)	Sanctioning of lease or mortgage with possession or granting of licence.
Section 86 (1) (2) and (3)	Submission of budgets by the trustees.
Section 87 (3)	Annual audit of accounts.
Section 89 (2)	Contents of audit reports.
Section 90 (1) (2) (3) (7) and (8)	Surcharge orders.
Section 101	Putting Trustee or Executive Officer in possession.
Section 118 (2) (b) (ii) (except the power to appoint trustees)	Powers conferred by scheme of any court before the commencement of the Act.*

G.O. 472, Revenue Department, dated 27—1—1960.

The State of Madras is sub-divided into 12 divisions, each under an Assistant Commissioner. He is also a Government servant. He is the *ex-officio* Secretary to the Area Committee of his division and has power to participate in the discussions of the Committee but not to vote. Under the Act of 1951, he was the Chairman of the Committee.

He exercises powers delegated to him by the Commissioner under the provision of the Act. His most important function is to implement resolutions passed by the Area Committee. He is required to send general information in respect of the religious institutions over which the Commissioner has general powers of superintendence and control. He has to send information to the Commissioner for assessment purposes under Section 92 and to the Deputy Commissioner in respect of listed temples and *maths* for the purpose of the judicial enquiry which the latter has to conduct. He has to forward to the Commissioner through the Deputy Commissioner the minutes of the proceedings of the Area Committee. He also has to bring to the notice of the Commissioner through the Deputy Commissioner, his own views on any item of the proceedings of the Committee and suggest such actions as he may consider necessary. (Section 177). The Assistant Commissioner thus aids the Commissioner, the Deputy Commissioner and the Area Committees.

The Commissioner delegates certain powers to the Assistant Commissioner.[7]

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7. Powers delegated to the Assistant Commissioner are as follows:—

Sections	*Powers and duties*
	In respect of all institutions
Section 24 (1)	Power to enter religious institutions.
Section 32 (1)	Causing the trustees to furnish accounts returns, etc.
Section 33 (1)	Inspection of property and documents.
	In respect of non listed institutions
Section 35 (2)	Special instructions to trustees to incur expenditure for securing the health of pilgrims etc.
Section 87 (3)	Annual audit of accounts.

The Assistant Commissioner has Inspectors under him since his main work is inspectoral in nature.

Area Committees:

The Area Committees are partially democratic in nature. The Government by notification constitutes an area Committee for all temples situated in an Assistant Commissioner's jurisdiction other than the temples enumerated in the list published, Under Section 48, i.e., institutions whose income is above Rs. 20,000/- the Government has power to vary the strength or the jurisdiction of any Area Committee or abolish it, provided the Government communicates to the Commissioner and the Area Committee concerned, the grounds for this action. When the Area Committee is abolished, a new one has to be constituted within 6 months of its abolition.

The jurisdiction of the Area Committee is settled by the Government and each committee is incharge of the temples and specific endowments for which it is constituted, and the charitable endowments to which the provisions of the Act apply. According to the provisions of the Act, the Area Committee must consist of a Chairman and not less than 2 and not more than 4 other members. The Chairman and the members are appointed by the Government for a term of 3 years. The Act also lays down the qualifications and disqualifications of the members.

The main function of the Area Committee to appoint trustees not exceeding 5 for each institution, to scrutinise registers of properties, scrutinise proposals relating to standard scales of expenditure, submitted to it by the religious institutions, and consider the objections from the people, assess them, and pass the budgets. The Area Committee also receives proposals from the trustees for altering *dittam* and can direct such alterations in the *dittam*.

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7. Section 90 (7) Requesting the Collector to recover the amount surcharged.

Section 90 (8) Applying to the Court or Government for conditional attachment of property.

For actual administration of the temples or *maths*, there are trustees who are hereditary or nominated. They have control over the office holders of the *maths* or temples. The trustees are bound to obey the lawful orders of the Commissioner, the Deputy Commissioner, the Assistant Commissioner and the members of the Area Committee. The trustees are required to take care of the endowment and administer the properties and funds in accordance with the terms of the trusts or usage of the institutions and as carefully "as the man of ordinary prudence would deal with such affairs, properties and funds if they were his own". He has to scrutinise every year, the register of properties of the institutions and submit it to the Commissioner directly or through the Deputy Commissioner, Assistant Commissioner or Area Committee. He has also to submit revised registers of property with alterations, if any, once in 10 years to the Commissioner. He has to furnish the accounts and returns of the institution every year. He has authority to incur expenditure for the safety, security and health of the pilgrims and the directors and for the training of archakas. He has the power, with the previous sanction of the Commissioner, to utilies surplus on objects laid down in the Act.

For religious institutions or temples in receipt of an income of over Rs. 20,000/- there is a Board of Trustees, appointed by the Commissioner, consisting of not less than 3 and not more than 5 members. They are responsible for the proper administration of the temples under their jurisdiction. For a term of 5 years the members elect their own Chairman.

Under the trustees are the servants of the temples and *mvths*, who are under the control of the respective trustees.

Notified Institutions:

There is a special category of the religious institutions called "the notified" religious institutions according to the provision of the Chapter VI of the present Act. If the Commissioner had reason to believe that a religious institution is being mismanaged, he could issue a notice to its trustee, calling upon them to show cause why the institution should not be notified. The trustee is

given a "reasonable time, not less than one month"[8] to reply to the charges. If the Commissioner, after inquiring into the matter, and if he still believes that the institution should be notified he would make a recommendation to the Government to this effect. As soon as the institution is notified, the Area Committee ceases to have jurisdiction over it, and the scheme which is framed ceases to operate. The Commissioner appoints a salaried Executive Officer to manage the affairs of the institutions during the period of notification. However the *maths* and the institutions with the hereditary trustees having a beneficial interest in the income of the institution can not be notified thus.

The offices of the Commissioner, Deputy Commissioner, Assistant Commissioner are organised on the same lines as the Government offices.

The office of the Commissioner is organised into 5 divisions. The Commissioner who is the head, is aided by a personal assistant.

The five sections are:—

1. Legal and General.
2. Revenue.
3. Assessment.
4. Establishment & Judicial Enquiry.
5. Accounts and Administration of endowments.

Chart of Departmental Organisation

Commissioner

P.A. to the Commissioner

Superintendent (Legal & General)	Superintendent (Revenue)	Superintendent Assessment & Administration	Superintendent Establishment & Judicial Enquiry	Superintendent Records, Administration of Charitable endowments

8. Fort St. George Gazette, Madras, dated 2-12-1959. Part IV.

The nature of the work done in the legal section[9] is to attend to the work relating to the suits, appeals and all other legal proceedings filed by or against the department in the High Court, or City Civil Court and Small Causes Court, Madras and in the mofussil courts from the date of receipt of summons till the case is disposed off and the file is sent to the records. Besides, the general matters of the office are looked after in this section.

The nature of the work done in the Revenue Section is to assess the income of the institution and fix up the demands for contribution and audit fees on damand registers, verify them, and balance statements, receive the collection made by the Assistant Commissioner, Tahsildars, fix up fees to private auditors, to prepare contingent bills for audit fees, reply to audit objections etc.

The nature of work done in the Accounts Section is preparation of annual budgets, preparation of contingent bills, or law charges, head office charges, maintenance of registers of fixed deposits etc.

The Judicial Enquiries Section deals with the application for revision of the orders or proceedings of the trustee, Area Committee, Assistant Commissioner, Deputy Commissioner, and *suo motu* proceedings for revision, application of transfer of proceedings from one Deputy Commissioner to another, enquiries under Chapter V etc.

Each section is headed by a Superintendent under him are Upper Division clerks and Lower Division clerks.

The offices of the Deputy Commissioners are likewise organised. Under the Deputy Commissioner, there is a manager and under him are the lower grade staff. Under the Assistant Commissioner there are Inspectors.[10]

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9. G. O. 703 Rural Welfare dated 26—5—1953.

10. A note on "Charity Commission" sent by the Secretary to Charity Commission, London, S. W. 1 dated 14—6—1960.

The departmental organisation of the Charity Commission of England and Wales has certain degree of clarity. The department is divided into 6 departments in the following manner :—

The personnel was reorganised by the Act of 1951. This act categorised the services. The service rules were framed and came into force on 30th September 1951. They stated "The Service shall consist of the following categories of officers:

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1. *Registration* (R Department)

This is in the immediate charge of a higher Executive officers. The department deals with the opening and distribution of the post, typing and despatch of letters, weeding files, compiling indexes, keeping records, muniment room and stationery.

2. *Accounts* (G Department)

This is in the immediate charge of a higher Executive Officer. This department deals with the accounts of charities which are required by low to be rendered to the Charity Commissioners, and are open to public inspection.

3. *Legal* (A, B, C, E & Department)

Each is incharge of a senior Legal Assistant. These departments deal with correspondance relating to charities. (except war charities) with the assistance of the official Trustees department, the Accounts Department and the Recording Department.

4. *Drafting* (D Department)

This is incharge of an Assistant Commissioner. Drafts of orders and schemes are prepared on requisitions from the legal department.

5. *Official Trustee of Charitable Funds* (O Department)

One of the Official Trustees is incharge of this department but the practical management is in the hands of the Accountant. The department deals with the sale of investments and the investment of money held by the Official Trustee and the remittance of dividends etc.

6. *Public Inquiries War Charities & Recordings* (F & W Department)

The Assistant Commissioner incharge of this department, hold public inquiries into the affairs of charities and deal with correspondence concerning War Charities and the registration of charities for disabled persons. The inquiries and conference held by the Assistant Commissioner. This department also deals with the enrolling and recording of deeds and obtains particulars of new charities created by will.

7. *Secretarial* (S Department)

This is incharge of a Secretary, who is the Establishment Officer and deals through the Deputy Establishment Officer with matters relating to the employment and pay of the staff and general organisation.*

* A note on 'Charity Commission". sent by Secretary to Charity Commission, London, S.W. 1 dated 14—5—1950.

Category	1.	...	Commissioner.
„	2.	...	Deputy Commissioner.
„	3.	...	P. A. to the Commissioner and the Assistant Commissioner.[11]

The categories among the non-gazetted personnel are:—

1. Senior Superintendent.
2. Junior Superintendent.
3. Upper Division Clerks.
4. Lower Division Clerks.
5. Typists.
6. Attenders.
7. Peons.
8. Watchmen

The services were integrated with the State Subordinate Services after the provincialization of the HRE Board.[12] The attenders and peons were absorbed in the class XXVI of the Madras General Subordinate Services and Madras Inferior Service.[13]

A new category of service is that of the Exceutive Officers. Formerly these were the servants of the religious institutions to where they were appointed. By the Act of 1959 they have been made Government servants and were appointed by the Commissioner. Their salaries are paid out of the Consolidated Fund, in the first instance and later recovered from religious institutions. There are over 300 Executive Officer. Not all the religious institutions could afford the expence of an Executive Officer. And it was not uncommon for one Executive Officer to represent two or three religious institutions. The Executive Officer was expected to obey the orders of the trustees.

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11. G. O. 1232 Rural Welfare dated 22—11—1951.
12. G. O. 950 Rural Welfare dated 28—8—1952.
    620 „ „ dated 5—5—1953.
13. G. O. 1149 Rural Welfare dated 16—10—1953.

The method of recruitment to the various posts was determined by the rules framed under the provisions of the Act 1951.

	Category	Method of Recruitment	Qualification
1.	Commissioner	(a) Promotion from Deputy Commissioner.	A degree in law of Madras or Andhra
		(b) Recruitment by transfer from persons holding the posts of District Judge in the Madras State Higher Judicial Service of I.A.S. officers of Senior scale.	University.
		(c) Deputy Collector holding senior scale posts in the Indian Civil Administrative cadre.	
2.	Deputy Commissioner	(a) Promotion from persons holding the post of Personal Assistant to the Commissioner or any of the posts of the Assistant Commissioner	A degree in law of the Madras or Andhra University.
		or	
		(b) Recruitment by transfers from persons holding the posts of Subordinate Judges in the Madras subordinate Judicial services	
		or	
		(c) Member of the Madras Civil Service (Executive branch) or Madras General service Part II, Class IX, Assistant Secretaries to Government.	

Category	*Method of Recruitment*	*Qualification*
3. ***P.A. to the Commissioner***	Appointment from the senior Assistant Commissioners.	A degree in Arts of Madras or Andhra University, preference being given to those possessing a degree in law of the Madras or Andhra University.
4. ***Assistant Commissioners***	(a) Transfer from non-Gazetted members of the HRC (AD) Department *or* (b) by direct recruitment from Advocates who have been practising at the Bar for a period of not less than 5 years *or* (c) Mamber of the Executive staff of the religious institutions including Executive Officers. (d) by direct recruitment (i) from the Bar if he has completed or will complete the age of 32 years. (ii) from among the members of the Executive staff of religious institutions if he has completed or will complete 45 years of age. (iii) Substantive vacancies of the category of Assistant Commissioners shall be filled in the proportion of (a) 40% by transfer	

Category	*Method of Recruitment*	*Qualification*
	(b) 20% by direct recruitment from among the members of the staff of religious institutions including Executive Officer.	
	(c) 40% by direct recruitment from the Bar.[14] Direct recruitment is by the Madras Public Service Commission, who would select and recommend the candidate to the Government, who makes the appointment and concurrence of the Madras Public Service Commission is taken before appointing to the Gazetted posts.[15]	

It is also stated in the same Government Order that in making all the above appointments, special attention would be paid to the provisions of the Section 9 of the Act of 1951 i e. only persons professing the Hindu religion would be appointed.

There is also a period of probation lasting for two years for persons other than District Judge or Sub-judge or of Indian Administrative Service, appointed to the above categories.

The Assistant Commissioner has to pass the accountant's test for Executive Officer, and a test in the Act of 1951 and the rules framed thereunder conducted by the Madras Public Service Commission.

14. G. O. 1232 Rural Welfare dated 22—11—1951.

15. G. O. 29 Rural Welfare dated 10—1—1952.

Recruitment to the Subordinate services in the Department is made by the Madras Public Service Commission. There is direct recruitment to the cadre of Lower Division Clerks and Superintendent from the Upper Division Clerks. One of the qualifications for the appointment is that the candidate should be a Hindu. Besides there are standard educational qualification which normally apply to the Government services.

Usually there is no training for the personnel of the Department. The qualifications set down are considered enough training. However, the first batch of the Assistant Comissioners after the formation of the Department, were required to undergo a period of training lasting for two months.

Personal files are maintained for discipline and punishments awarded after due enquiry. The Commissioner is responsible for maintaining the discipline and there is an appeal to the Government against his order. Rules relating to the retirement are the same which apply to the Government servants.

Salaries of the officers and subordinate personnel of the Department are paid out of, at the first instance from the Consolidated Fund of the State and then recovered from the HRCE Fund at the end of the financial year. In fact all the expenses incurred in respect of the Department are provided in at the first instance from the Consolidated Fund of the State and later recovered from the HRCE Fund.

Name of Post	Strength	Scale of pay as on 1—1—1960
1. Commissioner	1	Grade of pay plus special pay Rs. 200/-
2. Deputy Commissioners	2	Grade plus special pay Rs. 100/- *or* 550 — 50/2 — 750
3. Assistant Commissioners	9	250 — 50/2 — 500

Name of Post	Strength	Scale of pay as on 1—1—1960
4. P.A. to Commissioner	1	250 — 50/2 — 500
5. Verification officer	1	250 — 50/2 — 500[16]

The scale of pay of the staff employed in the office of the Commissioner:

Name of the post		Scale of pay
1. Senior Superintendent	...	190 — 10 — 240
2. Junior Superintendent	...	140 — 5 — 190
3. Upper Division Clerks	...	80 — 3 — 95 — 5 — 125
4. Lower Division Clerks	...	45 — 3 — 60 — 2 — 90
5. Attenders	...	24 — 1 — 32 — 1/2 — 35
6. Peons	...	18 — 1/2 — 25
7. Watchman	...	According to the market rate.[17]

The Department has a temporary establishment of the verification of valuable belongings of the temples. The Establishment consists of:

Post	No. of post	Scale of pay
1. Verification Officer	1	250 — 50/2 — 500
2. Gem Specialist	1	150
3. Stapathi	1	150
4. Lower Division Clerk	3	45 — 3 — 60 — 2 — 90
5. Peons	2	18 — 1/2 A — 25.[18]

16. Appendix V-A to the Administration Report of HRCE (AD) Department 1957-58, Madras, p. 30.
17. Appendix IX-A to the Administration Report of HRCE (AD) Department 1952-53, Madras, p. 15.
18. G. O. 2277 Revenue Dept. dated 13—8—1954.

The temporary establishment which was sanctioned by G. O. 436, Firka Development Department, dated 8-7-1948, is continued till today. The above scales of pay have since been revised with effect from 1-6-1960 in accordance with the recommendations of the State Pay Commission.

The Budget

The budget is framed by the Department and the Government has a limited power to modify it. The main sources of "income" of the HRCE Dapartment are the contributions from the religious institutions. Every religious institution getting an income of more than Rs. 200/- per year has to contribute annually not more than Rs. 7% to the HRCE Fund. An such as this amount was are used to defraying the expenses of the Department. Besides this any religious institution whose income is more than Rs. 1000/- per year has to pay, towards the cost of auditing of account fees not exceeding 1½% of its income.

The heads of expenditure are salaries to the officers and staff, travelling allowance, contribution towards the Provident Fund and previous expenditure on establishment, etc.

The income rose in 1951 and in 1953-54 it fell. That was due to a fact that Section 76(1) of the Act of 1951 was declared *ultravires* by the High Court in the Shirur Math case. After HRCE Fund was formed, it has been steady. According to the following statement—the income and expenditure of HRCE Department was as follows:

Year	Income	Expenditure	G.O.
	Lacs	*Lacs*	
1951-52	8.38	9.10	G.O. 724 Rural Welfare dated 30—5—1953
1952-53	10,29,126-8-4	11,97,066-1-10	G.O. 2277 Revenue dated 13—8—1954
1953-54	6,61,526-2-5	—	G.O. 2228 Revenue dated 19—7—1955

Year	Income	Expenditure	G.O.
	Lacs	Lacs	
1954-55	9,10,312-12-10	8,95,699-4-7	G.O. 2269 Revenue dated 8—6—1956
1955-56	12,58,467-7-0	9,20,553-15-9	G.O. 1612 Revenue dated 12—4—1957
1956-57	10,41,054-3-5	9,88,758-4-5	G.O. 3993 Revenue dated 21—10—1957
1957-58	9,93,421	7,17,371-29-0	G.O. 648 Revenue dated 28—2—1959

The controls are being exercised by Legislature, Executive and Judiciary to a varying degree. The control exercised by the Legislature is through the Minister-in-charge. The budget of the *Department is not presented to the Legislature. Only the questions* put by the members, are answered. Besides during the discussion of the various HRCE Bills and amending bills, the working of the Department is discussed. However, the control is limited because the budget is not submitted to the Legislature.

The Government has powers according to the provisions of the Act, besides, through the Minister, they exercise control over the Department.

The judiciary has been exercising control to a great extent. As soon as the Act of 1951 was passed, it was challenged in the Shirur Math Case in the High Court and later in the Supreme Court. Many of these cases which related to the control of the *maths* and temples with hereditary trustee with beneficial interest in the properties of the institution, were declared *ultravires* the Constitution and these institution were placed under a limited contorl of the HRCE Department. Section 76(1) of the Act of 1951, relating to the power of the Department to collect contribution was declared *illegal, and all the Sections relating to the* notification of the religious institutions of the Act of 1951 were also declared *ultravires* the Constitution.

As soon as the High Court of Judicature at Madras declared section 76(1) illegal, the order was issued, that in respect of *maths* and specific endowments attached to *maths* "No contribution under Section 76(1) of the HRCE Act of 1951 need be leveid or collected from the *maths* and specific endowments attached to *math.* But voluntary contributions given, may be accepted."[19] While in respect of temples and specific endowments attached to a temples "contribution may be levied from temples and specific endowments attached to temples, having paid Executive Officers. Such levy should not, however, be insisted in the case of temples and specific endowments which are of the nature of the temple at Chidambaram.

In case of these temples and specific endowments which are not under the control of paid Executive Officers, voluntary contributions may be accepted."[20] In respect of section 76(1), the Supreme Court confirmed the decision of the High Court in the Shirur Math case. The Supreme Court observed that for contribution to be fee it should corelate to the service rendered. In the light of this observance, the Government issued the following order on the recommendation of the HRCE Department that "the Government accept the recommendations of the Commissioner, HRCE Department, that the annual contributions under Section 76(1) of the HRCE Act of 1951 be levied in the following scale:

	Annual income of the Institution	Rate of levy of contribution
1.	Institutions whose annual income does not exceed Rs. 200/-	Nil
2.	Institutions whose annual income is Rs. 200/- and does not exceed Rs. 10,000/-	3%
3.	Institutions whose annual income does not exceed Rs. 20,000/-	3½%

19. G. O. 529 Rural Welfare dated 10—5—1952.

20. *Ibid.*

Annual income of the Institution	Rate of levy of contribution
4. Institutions whose annual income is Rs. 10,001/- *and above but does not exceed* Rs. 20,000/-	4%
5. Institutions whose annual income is Rs. 20,000/- and above but does not exceed Rs. 60,000/-	4½%
6. Institution whose income exceeds Rs. 60,000/-	5%

According to the Act of 1959, *the contribution is one which* does not exceed 7%.

In spite of the classification of the income, the levy of contribution appeared more as income-tax than as fee for the services rendered. The principal Act, therefore, was amended by the Act XXVII of 1954 by which the Commissioner became the Corporation sole in whom was vested the Administration Fund. The institutions were required to pay the contribution to the Commissioner and not to the Government and the contribution was not merged with the Consolidated Fund of the State.

In the Shirur Math case, the High Court held that the notification of *maths* was contrary to the fundamental rights guaranteed by the *Act 19 (1) (f)* and *Act 26*. The Government on the recommendation of the HRCE (AD) Department issued an order that "all notification cases pending in his (Commissioner's) office or proceedings for the settlement of schemes pending, before the Deputy Commissioners in respect of *maths* only may be dropped..............

2. The Government also decided to drop for the present the notification proceedings relating to Sri Parthasarathiswami temple, Triplicane and Sri Theagarajaswami temple, Tiruvotiyoor, pending before them. The Commissioner is therefore, requested to

instruct the Government pleader concerned to take necessary action for the withdrawal of the cases..........."[21]

In the suit relating to Shri Subhanayagar temple of Chidambaram, the High Court held the notification order of the Government illegal. When the Government asked for special appeal to Supreme Court, it was refused. The notification order, therefore, remained quashed. Thereupon the Government of Madras cancelled Rural Welfare Department notification No. 727 dated 4th September 1951 "in which Sri Subhanayagar temple, Chidambaram, South Arcot District and all the endowments belonging thereto were notified to be subject to the provisions of Chapter VI of the HRCE Act 1926 (Act II of 1927)"[22]

Delivering the judgement in a batch of suits filed by the managing trustees of Sri Udaya-Kaleswara and allied temples of Gandavaran and the new lessees of some of the temple lands against the former lessees for possession of the lands, the Second Additional Subordinate Judge, Nellore, held that the lease in favour of the former lessees by the former managing trustees were invalid and clearly against the beneficial interests of the temples. In the course of his judgement, the Hon'ble Judge observed, "In these parts, it had become unfortunately a habit with some of the trustees to treat temple properties as their private properties and deal with them for their private gains. They seem to lose sight of the fact that temples were left in their hands as both a public and a divine trust. Even among the lessees, there appeared to be a feeling that the lands of the temples could be enjoyed indefinitely to the detriment of the institution. If religious institutions should thrive and be real centres of culture, there must be an end to this vicious circle. More stringent legislation was necessary both against the trustee as well as the lessees, so that the people could enforce its legal rights more speedily and summarily."[23] In the light of the above observations of the judge the State Government on the recommendations of the Commissioner, HRCE

21. G. O. 131 Rural Welfare dated 8—2—1952.

22. G. O. 1278 Revenue dated 21—5—1954.

23. The Hindu, Madras, dated 25—7—1953.

Department issued an order that "in the lease deeds to be taken from the lessees, an additional clause to the effect that the lessees shall be responsible for any loss sustained by the temples if he fails to hand over the possession of the lands taken by the Commissioner on lease on the date of enquiry of the lease period..........."[24]

In the Shirur Math and Sri Subhanayagar temple cases, Court tried to limit the attempt of the HRCE Department for controlling the *maths* and temples which had hereditary trustees. When the interest of public temples (having no hereditary trustee) was concerned as seen in the Udaya—Isaleswara temple, Court appreciated more stringent control.

Functioning of the Department

As far as the working of the Department is concerned, like its predecessor it had undertaken several functions. The study of the several Administration Reports reveals that the Department is undertaking more and more functions, which are of not only supervisory and or controlling nature but also of management. The Department assigned a special staff to supervise festivals and *hundials* and it was found that supervision has benifited the temples. Inspectors were despatched to attend the auction of the lease of temple land, and this too has resulted in the increase of the value of lease amounts and rentals. The scheme of appraising the valuables of the religious institutions, started by the Board is being continued by the HRCE Department and is now nearing compleation. This is for the effective supervision and safety of the temple properties. The Department undertakes the repair etc., of the religious institutions, though occassionally, public spirited men do come forward to and undertake repairs. It was done was at Madura where a Donation Committee of non-officials was formed to renovate about 15 *Gopurams* of Sri Meenakshi Temple, Madura, which formsed part of "20 lakhs renovation scheme,......during the next three years."[25] More facilities are being provided to the worshippers and pilgrims today

24. G. O. 3425, Revenue dated 17—12—1953.

25. The Hindu, Madras, dated 15th September 1960.

than they enjoyed few decades ago. The institutions are kept cleaner than they were before. The Department is also undertaking the responsibility of increasing the revenue of the temples. By supervising as stated earlier, the *hundials* and auctions, they have already increased the revenue. They have framed a scheme for the manufacture of rose-water at Sri Dhandayutheswami temple at Palani and for the use of the temple tanks for pisciculture etc. The Department is also encouraging the revival of music and art in temples. Nathaswaram training centres have been inaugurated in a few temples.[26] The Department has even performed *Kumbabhisekam* from temple funds and other funds donated by the people.

In England, the trustees are 'assisted' by the Commissioners in carrying out the intentions of the trust. In India the trustees have very often failed to carry out the intentions of the trusts. With the result, there is a greater inclination 'to control' the trustees and 'conduct' certain function rather than 'assist' the trustees in carrying out their functions.

A study of administrative machinery brings to light certain special features of the structure. The structure that has been established by the Act of 1951 and later developed by the Act of 1959, is the result of two divergent views. The 'official' view as held by the HRCE Board and later by HRCE Department, and the 'unofficial' view expressed in the Legislature and in the Press, reveal two different attitudes. Neither has denied the need for supervision, control and better management of religious institutions. The difference of opinion was with regard to the agency, nature and degree of State control of these institutions. These divergent views have in turn influenced the structure and its development and growth. The Board's administration had been making a case for provincialization of administration. This finally led to the framing of the Bill 19 of 1947 for the establishment of a department for the administration of religious institutions. In the Legislature it underwent changes. The Act of 1951, though succeeded in establishing a 'department'

26. Administration Report of the HRCE (AD) Department for the year 1957–1958, p. 21.

which substituted for the Board a Commission headed by 'a one man.' The HRCE Department has wide administrative, quasi-judicial and other powers. It enjoys a degree of autonomy, as its finances are obtained not from the State but directly from clients of the department, the religious institutions.

At the same time the 'Commission' has certain other peculiar features. A Cabinet Minister is in charge of the 'Commission' and the powers of the Government are exercised through him. The Government has the power to appoint the Commissioner, Deputy Commissioner, the Assistant Commissioners and members of Area Committee. But the Area Committee appoints trustees with the result the Government does play a role albiet indirectly in the appoinment of this managerial body. Both the administrative and the managerial units ultimately are dependent upon the Government. What with the Government's powers to call for records of the Commissioner, Deputy Commissioner, Assistant Commissioners and even that of the Area Committees and trustees, the Commission can hardly be described as antonomous. Further the administration report of the 'Commission' is submitted to the Government and not to the Legislature.

The powers of the Government, Commissioner, Deputy Commissioner and Assistant Commissioner are justified by those, who advocate greater control, supervision and administration of religious endowments by the Government.

At the same time there has also been progress in the direction of greater democratization of the administrative machinery. The Act of 1959 created an Advisery Committee to aid the Department so that it would be more responsive to the wishes of the Hindus. Though this is merely an advisery body, the members are often competant to influence the administration of the HRCE Department. Also the Area Committees which had 'failed' under the Act of 1927 have been incorporated in the Act of 1951 at the instance of the members of Legislature. Though the Government have power to abolish the Area Committees, it can not resort to it lightly. They have to give reasons to the Area Committee for its abolition. Besides a new Committee has to be formed within

6 months of its abolition. Thus the Assistant Commissioner can not exercise the power of the Area Committee indefinitely, and there is no danger of the Area Committee becoming 'defunct' again. According to the Act of 1951, the Assistant Commissioner had the power to preside over the Area Committee, while by the Act of 1959, he is only an ex-officio Secretary of the Area Committee for which the chairman is nominated by the Government. The Government have power to frame rules for the Committee, but these rules are, as in England, placed before the Assembly according to the Section 116 (3).

The judiciary has aided in releasing from the Government control the religious institutions of 'denominational' character like the *maths* and temples having hereditary trustees with a beneficial interest in the properties. *Maths* can not be notified and no Executive Officers can be appointed to administer their properties. *Matadhipathi* can be removed only by court process and not by Executive order. Also, the powers in respect of *maths* are very limited over items such as the scrutiny of budget etc.

The administrative machinery, its structure and growth, therefore, are subject to diverse pressures. However, State control is still very strong and rigid, and the influence of democratic tendencies has been rather limited.

Administration within the Department has been considerably decentralised. The Commissioner has delegated[27] considerable powers to the Deputy Commissioner and Assistant Commissioner, though retaining the power of enjoying concurrently certain powers, delegated to the Deputy Commissioner, such as the power to issue instructions to a trustee—to incur expenditure for securing the health of the pilgrims etc. Section 35 (2), for the fixing of *dittams* Section 58 (1) (2) (3). He is authorised to demand submission of budgets by the trustees Section 86 (1) (9) (3) and the annual audit of accounts Section 87 (3) along with the contents of the audit reports Section 89 (2). He also enjoys the power, along with the Assistant Commissioner, to enter religious institution Section

27. G. O. 472, Revenue, dated 27—1—1960.

24 (1) and require the trustees to furnish returns etc., (Section 32 (1) and the right to inspect property and endowments (Section 33 (1). Thus the powers of inspection and control of properties of the religious institutions and diversion of funds are concurrently enjoyed by the Head of the Department and the Deputy Commissioner or Assistant Commissioner, as the case my be. This method of delegation, brings out an importart aspect of the administration, that there is tighter control over the administration of properties of the religious institutions by the Department of the Government.

Some recent trends

The movement towards tighter departmental control and promoting decentralization in the administration of religious institutions received a fresh impetus during the 1960s and early 70s. And these two objectives were largely achieved through two of the twelve amendments introduced in the Act of 1959. During this period a change occurred in the government of the state. The Congress party which had been in power since 1950 was sent out office in 1967 and the Dravida Munnetra Kazhagam (henceforth DMK) was returned to power. They not only promoted the above mentioned objectives but also pushed through 'significant welfare' measures *through temple administration.*

The amendments of 1970[28] secured the apparently contradictory objectives of a tight departmental control and decentralization of its administration at one and the same time. The amending act laid down that vacancies *in all cases,** that is, either temporary or permanent and of temple officers or servants, would be filled by the trustees of the institution. Similarly, trustees were given power to control, fine or remove temple servants. The latter power was subject to appeal.

These amendments were challenged by some hereditary *archakas* in the *Seshammal & Others*-vs-*State of Tamil Nadu.*[29] The Supreme

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28. *Fort St. George Gazette, Extraordinary, Madras,* dated 12th January 1971, Part IV, Section 4, p. 3.

* *Emphasis added.*

29. (1972) 2 *S.C.C.*, p. 11.

Court held the amendments valid on the grounds that they did not interfere with the religious freedoms of the institutions but merely regulated secular appointments of *archakas* to temples. As to the hereditary rights, the Court held that, "the fact that the son of an *archaka* or the son's son of an *archaka* has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary *archaka* can claim any right to the office.........(and) *in* view of sub-section (2) of Section 55 of the Act 1959 as amended by the amendment Act 1970 the choice of the trustee in the matter of appointment of an *archaka* is no longer limited by the operation of the rule of next-in-line of succession in temples where usage was to appoint the *archaka* on the hereditary principle...... To that extent......the trustee is released from the obligation imposed upon him by Section 28 of 1959 to administer the affairs in accordance with that part of the usage of the temple which enjoined hereditary appointments. Therefore *the usage in this* respect does not interfere with any religious practice or matter of religion......"[30]

The amendments, no doubt, considerably accelerated the process of decentralization by strengthening *the position and powers of the* trustees. By invalidating the hereditary principle for appoinments in temple administration, the court removed an important fetter which had long weakened the trustee's control over temple administration. It should, however, be remembered that the trustees who are not appointed directly by the Government are appointed by the Area Committees who are themselves appointed by the Government. Therefore any increase in the powers of trustees indirectly results in the tightening of the Government's control over religious institutions.

The next important amendments were in August 1972.[31] These make it obligatory upon the Government to appoint members of the Scheduled castes and Scheduled Tribes as trustees in temples

30. (1972) 2 *S.C.C.*, p. 11.

31. *Fort St. George Gazette, Extraordinary, Madras*, dated 5th October 1972, p. 125.

having an annual income of Rs. 20,000 and 3 and 5 trustees. At present[32] there are 491 *Harijan* (members of the Scheduled castes) trustees. The amendments will considerably increase their number as well as put them in-charge of important temples. When the measure was on the legislative anvil, Mr. M. Kannappan, Minister for Religious Endowments, announced a new proposal, which he said was under the Government's active consideration, of relaxing the eligibility rules for the appointment of *Harijan* candidates to trusteeship. The rule of compulsion with regard to the appoinment of *Harijan* candidates in government departments has now been extended to temple administration. The measures are no doubt commendable and perhaps were long over due. What is striking is the attempt to secure social justice with vengeance since the field chosen has a special significance for the 'justice' itself.

Mr. Kannappan also put forward another important proposal in the Legislative Assembly. It related to the abolition of hereditary trustees. The presence of hereditary trustees had plagued the HRCE Board and later the Department with litigation. Its abolition would no doubt eliminate a potent cause for litigation, but on the other hand it would also expand the field of governmental control since all the trustees would then be appointed either by Area Committees or the Government.

The DMK, an avowedly atheist party, has been generally active in the administration of Hindu religious institutions. Some of its measures are no doubt commendable. However, to what extent they are politically orientated, is doubtful. The latest proposal under the Government's active consideration is that of throwing open Hindu temples for entry by non-Hindus. Mr. Kannappan disclosed at the party meeting that his government had approached the Government of India with a request to amend the Constitution for the purpose.[33] Lately the Government has recovered 25,000 acres of land which had been lost to the temples through illegal

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32. *The Hindu, Madras,* dated 19th August 1972.

33. *The Hindu, Madras,* dated 17—8—1972.

transactions.[34] These are, no doubt on the credit side of the administration. However, since coming to power the Party has formed nearly 1,380 temple trusts "largely in order to induct its own followers into them."[35] Similarly, during the debate on the 1972 amendments in the Assembly, Mrs. T. N. Anandanayaki, a member of the Opposition, accused the Government of selecting trustees mainly on political basis, "even if they did not believe in God."[36] And when 'suitable partymen' were not available, she said, the Government deliberately delayed filling the posts. As has been rightly observed,......control of temple funds, even when scrupulously exercised, gives a party, group or individuals more than a little power and .influence."[37] This observation does not fail to reveal vast possibilities for the varied uses to which Hindu religious institutions can be put to. It is not necessary here to examine the allegations and either refute or establish the fact. The truth is this *can* occur and if a trend is set, complaints will not be against interference in religious matters as such, but against their utter neglect or the unprincipled use of religious institutions for non religious purposes. It is in situations like these that one notes the dangers of providing an administration, albiet efficient, which is ultimately subject to a changing political climate and may subordinate itself in the name of modernization to every emerging demand and lose sight of the purpose for which it was originally established.

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34. The Illustrated Weekly of India, Bombay, September 3, 1972, p. 11.
35. *Ibid.*
36. *The Hindu, Madras,* dated 19—8—1972.
37. *The Illustrated Weekly of India, Bombay,* September 3, 1972, p. 11.

CHAPTER XVI

MUSLIM ENDOWMENTS

The 'Wakfs' or the Muslim endowments are permanent dedications of some specific property for a religious, pious or charitable purpose and they are as old as Islam. With the advent of Islam in India, wakfs also came into existance. Rulers both Hindus and Muslims, endowed large properties for the maintenance of mosques, *Durgas*, and several charitable institutions.

There are in the State of Madras 5415 wakfs, endowed by two sects of Muslims viz., the Sunnis and the Shias. There are also many endowments made by the Hindu rulers and others, to the Muslim religious and charitable institutions. Of the 5415 Wakfs, 5370 are endowed by Sunni sect of the Muslims, and 45 by the Shia sect. The following statement gives the number, value and income of the Wakfs.

* STATEMENT – I

Wakfs with an income of Rs. 100 and above per annum.

Nature	Number	Value	Gross income	Net income
		Rs.	Rs.	Rs.
Sunni	2916	10,55,71,276	59,17,676	53,37,309
Shia	37	26,49,984	1,20,014	1,00,076
	2953	10,82,21,260	60,37,690	54,37,385

* The Survey Report submitted by the Commissioner of the Wakfs to the Govt. of Madras, Madras, dated 31—1—1958.

* STATEMENT – II

Wakfs with an income of less than Rs. 100 per annum or no income.

Nature	Number	Value	Gross income	Net income
		Rs.	Rs.	Rs.
Sunni	2454	39,69,898	27,347	25,752
Shia	8	96,490	102	102
	2462	40,66,388	27,449	25,854

The Wakfs in the presidency of Madras (before reorganisation) were subject to the same control as the Hindu religious endowments till 1923. The Regulation VII of 1817 operated till it was finally repealed in 1863, when the Act XX of 1863 was implemented. Under the Act XX of 1863, Wakf Committee were actually constituted in most of the districts and where they were not so constituted, it was due to the fact, that there were no religious establishments coming within the purview of the Madras Regulation VII of 1817......[1] Thus the Muslim endowments had their area committees, better known as Wakfs Committees for the supervision of the muslim endowments. However, the Act XX of 1863 worked as unsatisfactorily as it did in the case of the Hindu religious endowments. The Wakf Committees became extinct as time went on and the Mutawallis, or the Superintendents of the Wakfs, began to treat Wakf property as their private properties, misappropriated the income, and even alienated the properties by sale or lease. Religious and pious minded individuals, in isolated cases, took steps to rectify the situation, by instituting suits in Civil Courts, and to bring the management of Wakfs under proper control, by framing schemes. Yet the Wakfs, like the Hindu religious endowments, were not protected properly.

* The Survey Report submitted by the Commissioner of the Wakfs to the Govt. of Madras, Madras, dated 31—1—1958.

1. G. O. 4045, L. & M., dated 28—10—1931.

By 1922 a legislative measure to provide for protection and safety of the Hindu and Muslim religious endowments in Madras, was under contemplation. However, at the instance of Sir Mahommad Habibullah, the drafting Committee on the Religious Endowments Bill, decided to leave out the Mahommadan endowments from the Bill. "Sir Mahommad Habibullah thinks, that the present is not an opportune moment for undertaking legislation, in regard to Mahommadan religious endowments, and that, after this Act has been worked for some years, Mahommadans will apply for similar legislation".[2] The Bill was, therefore, altered accordingly. The words "and Mohammadans" in Clause 1 of the Bill were therefrom deleted and the Wakfs thus were excluded from the Bill 12 of 1922. When the Bill was introduced, many criticised the exclusion of the Mahommadan endowments. The Hon'ble Raja of Panagal (the Chief Minister) the mover of the Bill, replied "the Government thought that the time was not opportune to bring these endowments within the purview of the Bill......I have no doubt that the members will readily agree that with the Khilaphat question, still disturbing the minds of the Islamic communities, the time is not quite suitable for undertaking legislation in regard to the Mahommadan endowments. Besides in most of the earlier Bills......the Mahommadans were excluded from the scope."[3]

Elsewhere attempts were being made to provide for stricter control of the Muslim endowments. The Central Wakf Act XLII of 1923, was therefore enacted. The Act was implemented in Madras Presidency on 1st January 1932.[4]

The aim of the Act XLII of 1923 was "to make provision for the better management of Wakf property, and for ensuring the keeping and publication of proper accounts in respect of such properties."[5] However, the Act was only optional in nature. If the Provincial Government desired, it could, by notification in the

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2. Notes to G. O. 1982, L. & M., dated 18th October 1922.
3. Proceedings of the Madras Legislative Council, dated 17th December 1922, Vol. X, p. 1006.
4. G. O. 110, Firka Development, dated 8—3—1948.
5. The Unrepealed Central Acts, Vol. VII, p. 664.

official gazette bring into force, the provisions of the Act in the Presidency of Madras. As stated earlier the Government of Madras brought the Act into force in 1932.

According to the Act, the Mutawalli was required to furnish a statement of particulars, relating to the Wakf (of which he was the Mutawalli) to the Court within the local limits of whose jurisdiction, the property of Wakf was situated. The particulars specified the property, the gross annual income, the amounts of the Government revenue, rent or cess annually payable in respect of the Wakf property, estimates of the expenses annually incurred in the realization of the income of the Wakf property, the amount set apart for the salary of the Mutawalli, for the purely religious and also charitable purposes etc. The Mutawalli had, besides the above statement, also to submit, every year, another audited statement of accounts to the Court. The Mutawalli or any other person in-charge of the Wakf property, was allowed to meet the expenses incurred in connection with preparation and audit of the accounts. Any person, on payment of a certain fee, could examine the accounts of the Wakf. If a Mutawalli or any person in-charge of the Wakf property failed to submit the above statement could, under Section 10, be fined to the extent of Rs. 500 which could be extended to Rs. 2,000. The Provincial Government had the power to make rules for carrying out the provisions of the Act.

However, the operation of the Act was not successful. After the Act was implemented in 1932. the first statement of accounts submitted was in the District Court of Tanjore in 1934. Till 1948, only 56 statements had been submitted in 25 districts of the old Presidency of Madras. In 20 districts no statements had ever been submitted and in none of the districts, did the Court take action against the Mutawalli or any person in-charge of the Wakf property for failure to submit the accounts. However, the Act itself was defective in this respect, for, though the District Court was empowered to levy the punishment, it did not have power to act *suo motu* and bring a defaulting Mutawalli to book. This position was clarified in two important cases. In *Syed Ismail Sahib* Vs. *Ethikashe Sadgurn* and *Khazi Mohiuddin* Vs. *Sherif Sahib* it

was decided that, when an offence under this Act was committed, a complaint should be laid before a competent Criminal Court, which alone could levy the prescribed penalties. The District Court, therefore, had no power to act *suo motu* against the Mutawalli or any other trustee of the Wakf property.

In 1949 the Government of Madras wrote to the Madras High Court and to the Board of Revenue to suggest steps for the better enforcement of the provisions of the Act XLII of 1923.

According to the High Court of Judicature, the duties connected with the collection of information about Wakfs and the Mutawalli, and of the institution of prosecution against defaulters should be entrusted to an officer appointed or empowered for the purpose and provided with necessary personnel. The District Court can only furnish to such an officer, when required, the information whether the statement of accounts in a case has been duly filed or not.[6] The Board of Revenue held the same view and replied that, "the Central Act is undoubtedly defective; it contains no provision for the practical adminstration of the supervisory and penal functions assigned to the District Court. The work of watching the submission of reports of accounts, checking them launching prosecutions is of an executive nature and......cannot satisfactorily be done by the District Judge who is essentially a judicial officer and......has not got the requisite subordinate staff...... It is, therefore, necessary that the Act is so modified as to ensure a better administration of the Wakfs."[7] It was increasingly felt that a more comprehensive local Act should be enacted.

During 1923-54—the year when the present Act operated, several attempts were made to legislate on the problem. One such measure was the Madras Muslim Wakf Bill 9 of 1934 by the S. M. K. Beyabani Sahib Bahadur. The Bill was introduced in the Madras Legislative Council on 30th January 1934. The Bill had aimed at constituting a separate Board for the Muslim endow-

6. Notes to G. O. 240, Firka Development, dated 8—3—1949.

7. *Ibid.*

ments. After it was published,[8] it was sought to be referred to a select committee. Since the Government of Madras too had under consideration a measure for the proper administration of the Muslim endowments, the Bill was dropped.

In 1936 the Government of Madras appointed[9] a small committee for the purpose of evolving a scheme by which the scope and structure of the HRE Act of 1926 would be expanded and a single Board constituted to look after both the Hindu and Muslim endowments. After prolonged discussion the Chairman of the Committee, Mr. G. A. Jilani and a member, Mr. Basheer Ahmed Sayeed opposed the idea of a common Board on the ground that it would be illegal and lead to endless litigation. Though the other members did not subscribe to this view, it was, however, finally agreed that "though there would be no illegality in the constitution of a common Board, the legislation on the subject would be highly controversial and would lead to endless confusion and difficulties".[10]

Subsequently in 1938, 'The Madras Wakf Bill of 1938'......a non-official measure......was introduced by Mr. Basheer Ahmed Sayeed in the Madras Legislative Assembly.[11] It had, like the Bil of 1934, aimed at constituting a separate Board with a separate fund. The Treasury Bench was however reluctant to take a definite stand and wanted to watch the reactions of the Muslims of the Madras Presidency. The Prime Minister of Madras was of the view that "the Muslim feelings in these matters are so hypersensitive that we should not offer any opinions either way. Even good intentions are often misrepresented. We shall see how many Muslim members support it at the time when after ballot, leave for introduction is moved"[12] When the mover of the Bill sought the permission of the House to refer the measure to a Select

8. G. O. 80-82, Law (Legislature), dated 17—2—1934.

9. G. O. 745, L. & M., dated 24—2—1936.

10. G. O. 2422, Education & Public Health, dated 5—7—1938.

11. G. O. 4025, Education & Public Health, dated 10—11—1938.

12. Notes on G. O. 4025, Education & Public Health, dated 10—11—1938.

Committee, Hon'ble Dr. T. S. S. Rajan at once moved an amendment to the above motion that the bill be circulated for eliciting public opinion. Explaining his stand, he said "the Government do not wish to oppose the Bill......They are aware of the need *to better the administration of the Muslim endowments.* They move the amendment because ever since the Bill was published in the papers, we have not received any opinion for or against the bill......and, in matters relating to a particular community, it is the desire of the Government, that they should have an unmistakable proof of consent of the people, when the Bill is referred to them, particularly in matters of religion......of a sensitive type of people like the Muslims."[13] For this reply, the Government was accused of adopting dilatory methods by a Muslim member of the House, *to which Hon'ble C. Rajagopalachari replied,* "We are hatching a Bill to replace the HRE Act......it would not have been proper on our part, I submit, to be parties to hastening a measure in respect of the Muslim community of exactly the kind which we wish to displace in respect of the Hindu Community...... After the publication of the Bill no opinion has reached us and it is a little to much to say that just as no news is good news, we should take no opinion as good opinion in a controverscial matter of this kind......It is dangerous to proceed upon such matters......where leaders have been slow......In ordinary matters like the marriage etc......the Muslims wanted to be excluded from the ambit of Civil Marriage Bill which is merely a registration affair. But here, property of generations of people is concerned and we do not know what the reactions would be......It would be better if public is consulted on the matter......"[14] Motion to publish the Bill for eliciting public opinion, was carried and the *Bill was accordingly published. Majority of opinions, which were* received from the public supported the measure. After the receipt of the opinions, the mover of the Bill moved another motion that the Bill be referred to a Select Committee. The motion was put to vote and was lost.

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13. Notes on G. O. 4025, Education & Public Health, dated 10—11—1938.

14. Notes on G. O. 4025, Education & Public Health, dated 10—11—1938.

In 1947, a bill was framed by M. Abdul Latif Farooki, a member of the Madras Legislative Council. He, however, did not introduce the Bill in the Council.[15]

In the meanwhile the inadequacies of the Central Wakf Act XLII of 1923 were being realised in the various Provinces which passed amending Acts to meet the defect in the principal Act and provide for better supervision of the Muslim endowments. The Bombay Wakf Act XVIII of 1935 amended the Central Act of XLII of 1923. The Bengal Wakf Act of 1934 was enacted to create a machinery for the supervision of Wakfs in Bengal. In U.P. the Muslim Wakf Act 1936 (XIII of 1936) was passed creating a Wakf Board. Similarly Bihar also passed a legislation almost on the same lines. As a result of the working of these Acts, a necessity was felt that the Act XLII of 1923 required some amendments, or that a uniform and consolidated central legislation was necessary.

In 1952, Mr. Muhommad Ahmad Kazmi, a member of the Parliament introduced on 16th July 1952 the Muslim Wakf Bill (85 of 1952) in the House of the People.

Some of the salient features of the Bill were that (1) in each State a commissioner of Wakfs would be appointed at the cost of Wakfs to report to the State Government about the number, nature and income and expense of the various Wakfs of the State; (2) there was to be a State Board of Wakfs the members of which were to be elected by various bodies and constituencies; (3) the Board was to be in-charge of general supervision, and was empowered to establish particular committees for particular purposes; (4) over the Board was to be Central Board elected from various constituencies having power to superintend the State Board and co-ordinate their activities and administration.

Opinions from the State Government and private people were invited by the Central Government. The Government of Madras

15. G. O. Firka Development, dated 14—2—1948.

held[16] that each State should be made responsible to legislate on this problem, since problems relating to Wakfs differed from State to State. The method of constituting the Wakf Boards by election was objected on the grounds that it was not only impracticable but also discriminatory. A few other criticisms were: if the State Government could appoint Commissioner to the HRE Board, as well as to the HRCE Department, why could the same Government not be trusted to appoint Wakf Commissioner? As the State was a supervisory body in the case of HRE, the same function could be entrusted to the State Government rather than the Central Wakf Board, which besides paucity of finances would illafford such an expensive project.

On the basis of the replies received, the Select Committee made many drastic alterations. The system of election as a method to constitute the Wakf Board was given up and it was decided that the State Government could be left to constitute the Board by selecting candidates from among the various catagories specified in the Bill. Powers were to be vested in the plural headed Board. The Board was empowered to divert the surplus funds of the Wakfs on certain conditions and the people interested could challenge the diversion, again on certain conditions, in the Court. The Bill when enacted, was to apply to all the States except those where some Acts had already been in operation. However the option was left to the States to adopt the Act in their region.

The Bill as altered by the Select Committee was introduced in the House of the People on 12th March 1954. It was felt in certain sections of the House that the Bill was discriminatory in nature. The Bill, when enacted and adopted by a State, had the power of excluding Wakfs from the operation of existing Acts relating to religious trusts, for example Bombay Trust Act was not to apply to Wakfs, even when it could apply to all Non-Muslim trusts. Commenting on the Bill in the House, Hon'ble Mr. Pataskar said, "......the Muslim Wakfs will be excluded, so also the Jains. We know that when once the process of disintegration starts, there is no limit to it. Already we are suffering from the fact that

16. G. O. 160, Rural Welfare, dated 2—2—1953.

people do not think of India as a whole but think of India as sections."[17] The Bill after a brief discussion was passed into Act as Act XXIX of 1954.

Under Section (1) (3) of the Wakf Act, the Government of Madras issued a notification by which the Wakf Act came into force in Madras on the 15th January 1955.[18]

Chapter I relates to the extension of the Act. It extends to the whole of India except Bengal, Bihar, U.P. and Delhi. As stated earlier, though Bombay has the Bombay Trusts Act, it did not exclude Bombay State from its jurisdication.

Chapter II relates to the survey of Wakfs. The State Government has power to appoint a commissioner of Wakfs and as many Assistant Commissioners for the purpose of making a survey of Wakfs properties. The Assistant Commissioners have to work under the supervision of the Commissioner. After the survey, the Commissioner has to submit the report to the State Government, containing the following particulars relating to Wakfs. viz.

(a) number of Wakfs

(b) the nature and objects of each Wakf

(c) the gross income of the property comprised in each Wakf

(d) the amount of land revenue, cesses, rates and taxes payable in respect of each Wakf

(e) other particulars.

The Commissioner for carrying out the survey, is invested with same powers as are vested in a Civil Court under the Civil Procedure Code of 1908. After the Board is formed, the report which is submitted to State Government, is later passed on to the Wakf Board, which has to publish it in the official Gazette. The disputes relating to Wakf i.e., whether it is a Wakf

17. Parliamentary Debttes (the House of the People), dated 12th March 1954 Vol. II, p. 2045.

18. G. O. 52, Revenue, dated 8—1—1955.

or not, whether a Shia or Sunni Wakf, can be settled by instituting a suit in the Civil Court by the Board, or a Mutawalli or by a person interested and the said Court's decision is final. The costs for making the survey has to be recovered from the Mutawalli in proportion to income of the Wakf properties.

Chapter III relates to the power of the State Government to constitute a Wakf Board of the State. The Board is to be a body corporate with perpetual succession and common seal and the power to acquire, hold, transfer property, subject to certain regulation and has power to sue and be sued. The Board consists of certain number of Commissioners and the State Government has power to vary the strength of the Board. The Chairman of the Board is elected by the members of the Board from among themselves. The members of the Board are appointed by the State Government from among the following catagories.

(a) Members of the State Legislature, members of the Parliament representing the State.

(b) Persons having special knowledge of Muslim Law and representing Associations such as State Jamiat-ul-ulana-i-hind.

(c) Persons having special knowledge of administration, finance or law.

(d) In making the appointment of Sunni or Shia members, the State has to bear in mind the numbers and value of Sunni and Shia Wakfs.

The term of office of the Board is 5 years.

The Board is vested with general powers of superintendence of all Wakfs in the State and has to ensure that the Wakfs are properly maintained, controlled and administrated and income duly applied to objects and purposes for which the Wakfs were created. Besides this, the Board has responsibility of maintaining records of the Wakfs, give directions for the administration of the Wakfs, frame schemes for better management of Wakfs, scrutinize and approve budgets submitted by Mutawallis, to arrange for the

auditing of accounts, to appoint and remove Mutawalli, to take measure for the recovery of the lost property, to institute and defend suits. and proceedings in a Court of Law relating the Wakf, to sanction leases of property for more than 3 years or exchange properties according to the provisions of the Muslim Law, to administer Wakf Fund, to inspect Wakf property, to decide whether property is Wakf or not etc. The Board, if necessary, has power to constitute committees for any purpose or Area or Area Committees for the supervision of Wakfs and it is not necessary for members of the committee to be members of this Board.

The Chairman has the right to resign. The State Government has power to remove the Chairman or any member if he becomes subject to any disqualification for specified reasons or refuses to act in a manner which the State Government, after hearing his explanation, still thinks is prejudicial to the interest of the Wakfs. For the vacancy caused, the State Government has to appoint a member for the unspent period of office.

Secretary and other officers of the Board are appointed by *the State Government. The Secretary is the Chief Executive* Officer and is in-charge of the administration of the Board. The Board has power to delegate to the Chairman or any member or Secretary, subject to such conditions as are specified in the order, any power or duty necessary under this Act.

The Act has specified that the Chairman, or any member of the Board will not be disqualified from being the sitting member of the State Legislature or Parliament.

Chapter IV requires every Wakf, created before or after the commencement of the Act, to be registered at the office of the Board. Registration requires various specifications.

Chapter V deals with the budget and accounts. Every Mutawalli has to prepare a budget of his Wakf showing the estimated income and expenditure for the next financial year to the Board. The Mutawalli has also to submit in May their statement of

income and expenditure of the previous 12 months to the Board. These accounts have to be audited by the auditors appointed by the Board. This Chapter also describes duties and functions of the Mutawallis. Some of these duties are :—

1. to carry out the directions of the Board;
2. to furnish information about Wakfs;
3. to have the properties inspected;
4. to discharge all public dues etc.

The Mutawalli has to incur expenditure on items connected with the Wakf from the Wakf property. If the Mutawalli refuses to pay dues, taxes or cess etc. to the Government, or any local authority, the Board has to pay from the Wakf Fund, and later recover it from the Mutawalli and if he refuses to pay, recover it as arrears of land revenue; however, the Mutawalli is given a chance to explain his position. The Board has powers to create a reserve fund for the payment of taxes, cesses, if necessary, maintain and repair Wakf property etc. If the Mutawalli fails to carry out his responsibilities and if he is not able to satisfy the Court, he can be punished with a fine extending to Rs. 1,000/-.

If there is a vacancy in the office of a Mutawalli and if there is no one to be appointed to the office under the terms of the Wakf Deed, or if there is a dispute to the office, the Board has powers to appoint a Mutawalli to act for a time. The Board has powers to remove a Mutawalli if he is convicted for an offence under Section 41 (failure to carry out his duties) and has been convicted to criminal breach of trust. The Board has similar powers of removal, abolition or supercession of committees where such committees are constituted.

Any interested person can appeal to the Board against the management of the Wakf property, and the Board can take up the enquiries, if it believes there is ground for such action. The Board then holds enquiries on the above application or *suo motu* into the affairs of the management.

Chapter VI deals with the finance of the Board. The Board can collect contribution not exceeding 5% of the annual income of the Wakf property from the Wakfs situated within the State of Madras. The Wakf whose income is less than Rs. 100/- is exempted from the payment of the contribution. If Wakf Fund has to be constituted under Section 48, all the monies received have to be credited to it.

The Board has to prepare its budget of estimated income and expenditure for the coming financial year and forward a copy of the same to the State Government (Section 49). The Board has to maintain an accurate account of its income and expenditure (Section 50). The State Government has powers to get the accounts audited (Section 51) and has powers to pass orders on the audit reports submitted to them (Section 52). The sum certified as due for recovery can be recovered as arrears of land revenue (Section 57). The State Government is not liable for any expenditure incurred in connection with the administration of the Act (Section 54).

Chapter VII deals with judicial proceedings under Act XX of 1863, Section 92 of C.P.C. of 1908.

Chapter VIII deals with the powers of the Central and State Governments over the Wakf Board. The Central Government has powers to call for reports or information from the State Government with respect to the functioning of the Board in that State and after considering such reports, the Central Government can issue directions on questions of policy and the Board has to be guided by such directions. Subjects to direction issued by the Centre, the State Government can from time to time issue to the Board, such general or special directions as the State Government thinks it fit and the Board has to comply with such directions. (Section 62 and 63). If the State Government are of the opinion that the Board is unable to perform or has persistently defaulted in the performance of, has refused to perform the functions, the State Government can, by notification in the offiicial gazette, supercede the Board for such period as may be specified. However, before doing so, the Board has to be given reasonable time to

show cause why it should not be superceded and has to consider the explanation (Section 64).

After supercession all the member of the Board have to vacate the offices, all powers during such period have to be exercised by the State Government and all the property vests in the Government. After the expiry of the period the State Government have again to reconstitute the Board.

The State Governments have power to make rules and regulations for carrying out the purposes of the Act (Section 67 and 68).

As soon as the Act came into force in the State of Madras, survey staff was appointed by the Government of Madras. The Government sanctioned, for a period of six months, the posts of a *Commissioner of Wakfs on the senior* I.A.S. scale of pay of Rs. 800/-50-1000-60-1300-50-1800...[19] He was assisted by 14 Assistant Commissioners. They were appointed *for a period of* 3 months in the grade of Rs. 150-5-200 and each was posted in the District head quarters to do the preliminary survey work. Each Assistant Commissioner was aided by one lower division clerk. The staff that was sanctioned to help the Commissioner, consisied of: 1 upper division clerk, in the grade of Rs. 80-1-125 and one Stenographer in the grade of Rs. 45-90.

The Commissioner had his headquarter at Madras and worked under the general superintendence of the Board of Revenue. The expenditure incurred initially was debited to a new sub-head of accounts "Establishment of Survey of Wakf properties under the Muslim Act, 1954."[20]

The Commissioner submitted his report to the State Government on the 31st January 1958. During the survey work, the Commissioner faced several difficulties from the Mutawallis. "The *Mutawallis* were either avoiding or unwilling to supply particulars required for the survey." The Assistant Commissioners thereupon

19. G.O. 149 Revenue, dated 18th January 1955.

20. *Ibid.*

examined the Inam Registers to get the required information. Further difficulty was that the Mutawallis on learning about the purpose of the Act began to alienate the Wakf property by sale. This sale could not be prevented, because the Mutawallis had just to sell the property, execute the same deed and present it for registration in the Sub-Registrar's Office; and the registration of the deed could not be refused from being registered according to the provisions of the Registration Act.

Further difficulty was due to the Estate Abolition Act and the Rent Reduction Act. According to the provisions of the former Act, the estates of the Wakfs were taken over by the Government and the compensation in instalments given to the Mutawallis. The first instalment alone was given and it was discussed during the survey that the Mutawallis had misappropriated the funds without substituting the property and adding to the corpus of the Wakf. Even *Tasdik* allowances were misappropriated by the Mutawallis. The Government stopped[21] the payment of *Tasdik* allowances to the Mutawallis and deposited[22] them in the Treasury and ordered the recovery of the first instalment whereever had been misappropriated.

The survey report besides giving the number, nature, property, income etc of the Wakfs also gives fairly complete history of the Wakfs, detailed causes of mismanagement and which requiries immediate attention.

As soon as the survey report was submitted, the service of the officials and staff were terminated and the Wakf Board was constituted on 1st February 1958.

The State Wakf Board is a statutory body. The Board consists of the members appointed by the State Government. One of them was elected Chairman of the Board. The powers and functions envisaged by the Act are vested on this plural headed Board.

21. G.O. 2559, Revenue, dated 27th June 1956.

22. G.O. 3296, Revenue, dated 27th October 1955.

Besides the Chairman and the 10 members, there is a Secretary, who is in-charge of the Board's administration. The Secretary was appointed by the State Government in consultation with the Wakf Board. Under the Secretary, is the following staff:

1. Upper Division Clerk.

5. Lower Division Clerks.

1. Typist.

1. Cashier.

1. Attender.

2. Peons.

The Wakf Board is at present organising its administration. The Government of Madras has advanced rupees one and half lakhs for the initial expenditure which however is to be recovered later from the Board. The Board has not so far submitted any report of its administration to the Government of Madras.

As soon as the Wakf Act XXIX of 1954 came into force, a lacune was detected. The Act applies to those endowments which are made by the people 'professing Islam' the result is that a number of endowments made by non-Muslims, mostly Hindus, fell out of the scope of the Act. Sooner or later the Act will have to be amended to include such Wakfs.

Financial stability of the Wakf Board is doubtful. It is doubtful whether the expenditure will always remain within the limits of the income. The Wakf Board has borrowed from the Government and will perhaps keep on borrowing, as the Madras Hindu Religious Endowment Board did in the beginning. It was the financial weakness of the Hindu Religious Endowments Board which increased the power of the State Government over the Hindu religious endowment. The same ought to occur in case of the Wakf administration. It is probable, however, it will not occur because the policy making power partly lies with the Central Government which will certainly check the growth of the power of the State Government over the Muslim endowments.

A study of the framing of Wakf legislations reveals the attitude of the Muslim community on the role of the State in the matter and also brings out the difference between the attitude of Muslim legislators and the Hindu, on the question of the State control ot religious endowments.

In the beginning the Muslim preferred their endowments to be free from the control of the State. They preferred to wait and watch the experiment. Later, when control of the endowments had to he provided, they preferred the endowment to be controlled by a separate Board. The preference has come to stay and in Madras State there are two Boards to carry out the same functions. Perhaps a strong plea is that the Wakfs are also of a religious nature and the religious interest of the minority should be managed by the minority itself, in keeping with the true significance of a Secular State. However, in the opinion of Mr. M. Patanjali Sastri, secularism aims at safeguarding the interest not only of the minority but also of the majority. If the religious endowments of the minority are not to be subjects to the same tight control of the State as the religious endowments of the majority are, it stands to reason that religious endowments of the majority should be freed from such control of the Secular State. If the above plea is not correct, the second possible reason may be that the Muslims, have no confidence in the impartiality of the Government which they have elected, because it consists predominantly of Hindus.

That the legislators have were not too inclined to legislate on the problem of controlling the Wakfs, is also not far from the truth. At the instance of Sir M. Habibullah, the members of the Madras Legilature allowed the Muslim endowments to be dropped out of the scope of the Bill and did not insist that the Muslim endowments required the same 'protection' as the Hindu endowments. If the Act XX of the 1863 had failed in respect of Hindu religious endowments, it could not have succeeded in respect of the Muslim endowments. Before long, it was also realised that the Wakfs Act XII of 1923 has also proved a failure and like the Hindus Trustees, the Mutawallis too misappropriated Wakf properties. The need to protect the Muslim endowment was therefore

urgent and protection could have been afforded by the Act of 1951, after modifying it suitably. However, the explanation given by Sri P. T. Rajah and Sri C. Rajagopalachariar in 1938 when the Wakf Bill was being discussed on the floor of the House, point out a hesitancy on the part of the legislators who were predominantly Hindus, to legislate 'on matters of religious......of a sensitive type of people like the Muslims'.[23] The same hesitancy prevailed even later and the Madras Hindu Religious & Charitable Endowments Acts of 1951 and 1959 do not apply to the Muslim Endowments. The principle of affording protection to the religious endowments was therefore given up for the sake of political expediency and the legislators on such occasion first thought themselves to be Hindus and rather than as legislators. The same hesitancy was responsible for two legislations establishing two different agencies to supervise religious trusts.

The Hindu Religious Endowments Acts were justified on the ground that it controlled the secular administration of religious trusts and did not interfere with religion, whereas Wakf legislation was not supported on the ground that "it referred to matters of religion......of a sensitive type of people like the Muslims".[24] The attitude prevails even today and the Hindu Religious & Charitable Acts of 1951 and 1959 provide for *tighter* control over Hindu religious trusts than the Central Wakf Act does over the Muslim religious trusts. There is thus no one stand on the same issue and betrays again the triumph of expediency over principle.

The science of public administration lays down that duplication of agencies for the same function leads to wasteful expenditure and inefficiency. A single machinery affording suitable safeguards to all religious trusts will be less expensive and will by such an arrangement be saved from identifying itself with one religion or religious denomination and getting commiited, albeit unwittingly, to positions and attitudes inconsistent with the concept of the

23. Notes to G.O. 4025 Education and Public Health, dated 10—11—1938.

24. *Ibid.*

secular State. Parhaps, by slow degrees, all India legislation may grow and supersede the laws and practices now prevalent in several states in regard to different religions. Administratively, and also from the point of view of seperation of Government from religion, it is desirable to work towards a regionally and inter-regionally integrated system of law enshrining the principles of uniformity (over all territories of India) and religious neutrality (in respect of all religions).

Chapter XVII

CHRISTIAN ENDOWMENTS

There is no special Act, like the HRE Act or the Muslim Wakf Act, applicable to the Christian endowments. These are managed by churches according to their own laws and customs. Unlike the Hindu religious establishments, the institutions of the churches are systematically organized and staffed by lay and clerical persons who look after the application and management of endowments.

According to the Roman Catholic Church properties belong "......to the moral person which has rightfully acquired these goods" (Can: 1499 L). The 'moral person' is bishopric, a religious house etc. (Can: 99). The moral person is a perpetual minor (Can: 100 31). Since minors cannot manage properties, the ecclesiastical property is managed, administered by a 'physical person' in the bishop, the parish priest or others under the supreme authority of the Apostolic See (Can: 1518).

The Roman Catholic Church in India enjoys the freedom granted by Article 26 of the Indian Constitution. It also accepts the restrictions placed by Article 26 (d) i.e., the properties would be administered 'in accordance with law', namely the law of the country. There is no act framed so far, like the HRE Act or the Muslim Wakf Act, in respect of the Christian religious institutions. There is the Trusts Act and the Section 92 of the Civil Procedure Code. However, the Roman Catholic Church holds that since "there is no statuate Law on a point, the administration of such property has to be carried on in accordance with customary law, which form the administration of our ecclesiastical property is canon law.[1] The Canon Law, according to the Bishop of Salem 'has of its own accord chosen to follow the civil law of the

1. Extract from the answers given by the Bishop of Salem to questionnaire prepared by the writer, dated 10th June 1959.

country on many a point, as on prescription (Can: 1508), contracts (Can: 1529), legal interest (Can: 1543), arbitration and compromise (Can: 1926). To this extent civil law of India became canon law."[2]

According to, the Roman Catholic Church ecclesiastical property is not a trust property. The properties are owned by ecclesiastical moral entities in the same manner as non-ecclesiastical properties are owned by physical person. However, there are stringent rules provided under the Canon Law and the one, who has to administer the property, has to scrupulously follow the rules. Pious foundations are temporal goods and are given to the parish with a perpetual obligation to perform certain ecclesiastical functions. Such foundations are under the authority of the Bishop. The actual administration, however, lies with the parish priest who must submit the accounts to the Bishops every year (Can: 1549).

The properties of the Roman Catholic Church, therefore, belong to the parish and diocese which have beneficial ownership and not trust ownership.

The Roman Catholic Church prefers to subject their property to Canon Law than to general law. It is of course as a result of the ancient dispute between the Church and the State that Church in India too wants to maintain its domain where its laws will prevail.

The Protestant churches in South India preferred rather to register themselves under the Indian Companies Act. The properties of these churches and other charitable institutions are managed as per the conditions of the Act. It provides for a Committee to look after the properties, and submit the accounts to an auditor. One of the leading associations of the churches in South India is the South India Trusts Association under which major sects of protestant religion have amalgamated.

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2. Extract from the answers given by the Bishop of Salem to questionnaire prepared by the writer, dated 10th June 1959.

The Committee is an elected body consisting of honorary members. The membership includes not only clerical but lay orders too. There are 'area committees' for every diocese.

The Protestant Church thus has and manages its properties according to the general law of the land and has no special internal law of management as is laid down in the Canon Law of the Catholic church.

The Christian churches being highly organized corporations have not attracted the attention and interest of the State as it did in the matter of the Hindu institutions. Hindu religion has no clerical order nor an 'organization' comparable to those found among the several Christian denominations.

Chapter XVIII

CONCLUSIONS

At the end of each chapter I have presented the conclusions that emerged from the material. In this, the final chapter, some general reflections arising from the study of the relations between the State and religious institutions and the way in which these relations are likely to develop and be organized, are submitted.

Religion is perhaps the most powerful force that impels people to contribute to charity or endow institutions for perpetuating their philanthropy; and in India, kings, landowners, wealthy merchants and successful entreprenuers have made from times immemorial large endowments for the erection and maintenance of temples and *maths*. This is more evident in South India which was spared recurrent foreign invasions which laid waste upper India. In Madras State there is no village of any size which has not got atleast one large temple and the *maths* too are numerous and well-endowed.

As a rule the State as a political power became interested in the affairs of religious institutions only when there was complaint about the management of their properties. It was clearly, in the first instance, concern with mismanagement of funds by trustees rather than with questions of faith, dogma or ritual (which constitute the 'religious' side of religious endowment) that called for state intervention. But as these institutions are from their inception and through their continued existence primarily religious institutions, some problems of management arise, whose solution affect the nature of traditions and practices. While these problems by and large devolve round the matter of funds and administration, they also involve determination of issues of practice and ritual which belong properly to the domain of religious faith and social customs.

The first question is whether a secular state can concern itself with the religious life of the people, and create a department to supervise the affairs of religious institution. This is, however, unlikely to develop into a contentious issue in India because of certain historical and local reasons. Those who are concerned with this issue are just a small, and enlightened minority, and not a pressure group, seeking freedom from state control for its own ends. Neither Government nor the public at large are interested in this rather theoretical problem, for disputes between church and state in the western sense are unknown in India. This is because the Hindu religion has never in any of its numerous denominations been organized in the manner of Christianity or Islam. The Hindu king had always considered himself as a servant of God and never as His vicegerent, and it would never have occurred to him to issue regulations for temples and *maths*, organize their budgets on a national basis, or order their ritual. Neither did any ecclesiastical hierarchy emerge and the temples or *maths* never claimed the right to direct the actions of the king or determine state policy. If the king did interfere (which was seldom) it was in order to correct some local error or to arbitrate in a dispute, it was part of his general duties to maintain *Dharma* and was never taken amiss. At the same time, the clerical order was neither suffiiciently well-organized nor class-conscious enough to oppose the claims of the king or the state. The present establishment of the HRCE Department goes unchallenged on principle because of the historical experience.

The vast majority of the people of the State are Hindus as are the majority of elective and appointed servants of the State. So it does not appear incongruous or unjust for such a government to deal with temples and *maths* in much the same way as it deals with other social institutions in the land. For its part the Government are not conscious of any "legal difficulties" or any inconsistency between its role here and the Constitution and when such problems do get raised, they tend to be minimized for the same reason that the public accepts the present position that there being no religious difference between the government personnel

and the majority of the people; most of the judges and lawyers also belong to the same religion and so every one takes it as quite proper and normal for the State to undertake certain responsibilities in respect of religious institutions. Or at worst the propriety of State action in the affairs religious (mainly Hindu), is treated purely as an academic problem.

Even the adoption of the new Constitution does not make any serious change because the State has not been plainly declared 'secular' and there is no specific prohibition of concern with the management of temples and *maths* where such had already prevailed. There is no clear cut declaration of the separation of Church and State. Moreovr, the judges, in the many cases that had come before them, never tackled this basic issue but strictly confined themselves to the specific issues in the disputes before them. Where hereditary trustees had proved their claims, the courts have released their institution from State control. No one has challenged the title of the State in regard to public temples. The Government have, therefore reason to maintain that they are within their rights in legislating for and supervising religious institutions. Thus it may be held to be a settled position in India that the State is entitled by 'law and usage' to regulate and supervise Hindu religious institutions.

The position is not the same with reference to Christian religious institutions which have a European background of State patronage as well as a history of struggle against the State for the preservation of their corporate autonomy. The Christian denominations are clearly defined organizations which makes their relation to the State very different from that of the Hindus.

It is often believed, that the policy of the Government today in supervising religious institutions is a continuation of the policies of the old governments. This is not really so. Under the Hindu kings the actual management of the temples was left to local initiative. The British interfered only when there was mismanagement. Though they supervised the institutions through the Board of Revenue, they never undertook actual management. Even this policy of supervision was abandoned and a policy of non-intervention

was adopted in 1839. Such was the government policy till 1922. The only concern was with the lands of the institutions and through the various legislative measures. There was no supervision or control of religious practices and rituals. After the introduction of the Montagu—Chelmsford reforms this policy was changed by the initiative of the people and the "Transferred Half" of the Government. The people who had known the benefits of the early English supervision of their religious institutions wanted the Government to resume the function and give up the policy of religious neutrality. The Ministers too tended to this view and established the Board of Commissioners and Temple committees and thus effected an important change of policy. The working of the Board shows how simple supervision led to the exercise of managerial responsibility through the Executive Officers. After the abolition of Temple committees local initiative was at an end and all powers were centralized in the Board. The policy after 1922 was thus different from the one which operated before. The assumption of the responsibilities of supervision etc., by the Board was a negation of the principles of the Montagu-Chelmsford reforms which had aimed at fostering the art of self-government. The right to supervise local institutions such as religious endowments was taken away from the local people and vested in a Board at Madras. The establishment of a department in place of the Board, is, however, a logical conclusion of the policy adopted in 1922. Yet on theoretical and practical grounds it seems desirable to introduce a modicum of self-government in this field. A few specific civil and judicial principles can be laid down for the guidance of temples and *maths* and unofficial bodies set up, to which the *maths* and temples could turn for advice. If the Government continues to assume more and greater responsibilities and adopts policies dictated by the developing demands of practical management, it will be establishing precedents which might lead to the creation of a kind of 'ecclesiastical' department of the State Government. At that stage legal and constitutional objections would be encountered and with far more serious implications.

As regards the diversion of funds of religious institutions for secular purposes, however desirable it may be from the social point

of view, it seems wrong on legal ground. In the Catholic church for instance, that which is given for a religious purpose cannot be diverted to a secular purpose. The application of the *cy pres* doctrine to religious funds is rather questionable. Once such a precedent is established, there can be no limit to the diversion of such funds by governments which are not sympathetic to religious considerations. Temples and *maths* may be put to new and non—religious use. A serious awareness of such a possibility does not now seem to exist in the Government or the Legislature, but it is a likelihood fraught with socially disturbing consequences.

On the positive side, the establishment of the HRCE Department stimulated the authorities of the religious institutions into action. The temples are being better looked after and *maths* are adopting programmes of religious and social education on a large scale. This is a net benefit accruing from the State control.

The HRCE Department in its present form is likely to remain permanent; there is no prospect of its being replaced by a corporate, autonomous body. Hence it would seem desirable that the department be better integrated with the Government and its status raised to that of any other Government department with the assurance of interchangeability of personnel. Smaller units with fewer responsibilities can develop within a general department of Religious Endowments to look after the Muslim and Christian endowments as and when some aspects of these are brought within the purview of the State.

ABBREVIATIONS

A.I.R.	:	All India Reporter
E & R.E	:	Endowment & Religious Endowment
F.D.	:	Firka Development
G.O.	:	Government Orders
HRE	:	Hindu Religious Endowments
HRCE	:	Hindu Religious & Charitable Endowments
I.L.R.	:	Indian Law Reporter
I.A.S.	:	Indian Administrative Service
J.S.C.	:	Joint Select Committee
L.W.	:	Law Weekly
M.L.A.	:	Madras Legislative Assembly
M.L.C.	:	Madras Legislative Council
M.L.J.	:	Madras Law Journal
P.H.	:	Public Health
R.W.	:	Rural Welfare
S.C.C.	:	Supreme Court Cases
S.C.J.	:	Supreme Court Journal
S.C.R.	:	Supreme Court Report.

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